

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants:	David C. Dressel et al.	§	Int'l. Filing Date:	21 January 2004
		§		
Application No.:	10/542,899	§	Priority Date:	21 January 2003
		§		
PCT No.:	PCT/US04/01533	§	Legal Examiner,	Daniel Stemmer
		§	PCT Legal Affairs	
Filed:	July 20, 2005	§		
		§	Confirmation No.	8372
For:	Method and Apparatus For	§		
	Applying A Foam Layer	§	Customer No.	23505

RENEWED PETITION UNDER 37 CFR §1.497(d)

Mail Stop PCT  
Commissioner For Patents  
Office of PCT Legal Administration  
P. O. Box 1450  
Alexandria, VA 22313-1450

Atty. Docket No.: 1216-04302  
Date: November 13, 2006

Dear Sir:

Applicants are in receipt of the *Decision on Petition Under 37 CFR 1.497(d)* dated 1 November 2006 (courtesy copy enclosed), regarding the captioned matter. In the *Decision*, Applicants' Petition To Correct Inventorship by the Addition of Inventor(s) (37 CFR 1.497(d)(1)) filed on 31 August 2006 was dismissed without prejudice because Applicants failed to provide a copy of a Stock Purchase Agreement, establishing the acquisition of Foam Enterprises, Inc. by BASF. In order to remedy this oversight, Applicants enclose a copy of the executed Stock Purchase Agreement with this paper, and generally refer to the 31 August 2006 Petition for all other items required by 37 CFR 1.497(d). Please note that portions of the Stock Purchase Agreement are redacted to protect sensitive information that is irrelevant to the Petition.

Applicants understand that no additional petition fee is required for this submission.

Respectfully submitted,



Matthew R. Moscicki  
Reg. No. 57,524  
CONLEY ROSE, P.C.  
P. O. Box 3267  
Houston, Texas 77253-3267  
(713) 238-8000 (Phone)  
(713) 238-8008 (Facsimile)  
ATTORNEY FOR APPLICANTS



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CONLEY ROSE P.C. - HOLSEM

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CONLEY ROSE, P.C.  
P. O. BOX 3267  
HOUSTON TX 77253-3267

In re Application of	:	
DRESSEL et al.	:	
Application No.: 10/542,899	:	DECISION ON PETITION
PCT No.: PCT/US2004/001533	:	
Int. Filing Date: 21 January 2004	:	UNDER
Priority Date: 21 January 2003	:	
Attorney Docket No.: 1216-04302	:	37 CFR 1.497(d)
For: METHOD AND APPARATUS FOR	:	
APPLYING A FOAM LAYER	:	

This decision is in response to applicants' "PETITION TO CORRECT INVENTORSHIP BY THE ADDITION OF INVENTOR(S) (37 CFR 1.497(d)(1))" filed in the United States Patent and Trademark Office (USPTO) on 31 August 2006.

**BACKGROUND**

On 21 January 2004, applicants filed international application PCT/US2004/001533, which designated the United States and claimed a priority date of 21 January 2003. A copy of the international application was communicated to the USPTO from the International Bureau on 05 August 2004. The thirty-month period for paying the basic national fee in the United States expired at midnight on 21 July 2005.

On 20 July 2005, applicants filed a transmittal letter for entry into the national stage in the United States which was accompanied by, *inter alia*, the basic national fee and the surcharge under 37 CFR 1.492(h) for filing any of the search fee, the examination fee, or the oath or declaration after the date of the commencement of the national stage.

On 27 December 2005, the United States Designated/Elected Office (DO/EO/US) mailed a NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating, *inter alia*, that an oath or declaration of the inventors in compliance with 37 CFR 1.497(a)-(b) was required.

On 17 January 2006, applicants filed a declaration of inventors naming David C. Dressel and Peter N. Longtin as inventors.

On 01 August 2006, the DO/EO/US mailed a NOTIFICATION OF DEFECTIVE RESPONSE (Form PCT/DO/EO/916) indicating that the second inventor listed on the declaration filed 17 January 2006 did not appear on the international application.

On 31 August 2006, applicants filed the instant "PETITION TO CORRECT INVENTORSHIP BY THE ADDITION OF INVENTOR(S) (37 CFR 1.497(d)(1))". The petition was accompanied by a statement by Peter N. Longtin, a consent of assignee statement, and a statement under 37 CFR 3.73(b).

### DISCUSSION

37 CFR 1.497(d), provides:

(d) If the oath or declaration filed pursuant to 35 U.S.C. 371(c)(4) and this section names an inventive entity different from the inventive entity set forth in the international application, or if a change to the inventive entity has been effected under PCT Rule 92<sup>bis</sup> subsequent to the execution of any oath or declaration which was filed in the application under PCT Rule 4.17(iv) or this section and the inventive entity thus changed is different from the inventive entity identified in any such oath or declaration, applicant must submit:

- (1) A statement from each person being added as an inventor and from each person being deleted as an inventor that any error in inventorship in the international application occurred without deceptive intention on his or her part;
- (2) The processing fee set forth in Sec. 1.17(i); and
- (3) If an assignment has been executed by any of the original named inventors, the written consent of the assignee (see Sec. 3.73(b) of this chapter); and
- (4) Any new oath or declaration required by paragraph (f) of this section.

Applicants have satisfied items (1) and (2).

Item (3) has not been satisfied. Assignment to Foam Enterprises, Inc. has been established. However, acquisition of Foam Enterprises, Inc. by BASF has not been established. Although the consent of assignee statement states that a copy of a Stock Purchase Agreement is included, no such copy appears in the file.


As to item (4), a new declaration is not required by 37 CFR 1.497(f) in the instant situation.

### CONCLUSION

The request under 37 CFR 1.497(d) is **DISMISSED** without prejudice for the reasons set forth above.

If reconsideration on the merits of this petition is desired, a proper reply must be filed within TWO (2) MONTHS from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.497(d)." No additional petition fee is required.

Please direct further correspondence with respect to this matter to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



Daniel Stemmer

Legal Examiner

PCT Legal Affairs

Office of Patent Cooperation Treaty

Legal Administration

Telephone: (571) 272-3301

Facsimile: (571) 273-0459

STOCK PURCHASE AGREEMENT

DATED

MARCH 1, 2004

BY AND BETWEEN

DENNIS E. HOLBERT, MELINDA GAY HOLBERT, GREGORY D. GUSTAFSON, AND  
JAMES L. ANDERSEN, AS THE SHAREHOLDERS OF FOAM ENTERPRISES, INC.

AND

BASF CORPORATION

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#### Exhibits

- A. Wire Transfer Instructions
- B. Raw Material Prices
- C. Sellers' Opinion of Counsel;
- D. Form of Employment Agreement
- E. Form of Release
- F. Form of Noncompetition Agreement
- G. Resolution Adopting Severance Policy
- H. Purchasers' Opinion of Counsel

## STOCK PURCHASE AGREEMENT

STOCK PURCHASE AGREEMENT, dated as of March 1, 2004, by and between Dennis E. Holbert ("D. Holbert"), Melinda Gay Holbert ("M. Holbert") Gregory D. Gustafson ("G. Gustafson"), James L. Andersen ("J. Andersen"), (D. Holbert, M. Holbert, G. Gustafson, and J. Andersen are sometimes referred to individually as "Seller" and collectively as "Sellers"), and BASF Corporation ("Purchaser").

### WITNESSETH:

WHEREAS, Foam Enterprises, Inc. ("Company") is in the business of research and development, manufacturing, blending, marketing, using, distributing and selling polyurethane systems and other related equipment products and services (the "Business").

WHEREAS, the issued and outstanding stock of Company consists of 1000 shares (the "Shares") of its common stock, \$.01 par value (the "Common Stock"), all of which are owned by Sellers; and

WHEREAS, the Sellers desire to sell and transfer to the Purchaser and the Purchaser wishes to purchase from the Sellers, all of the issued and outstanding Shares of the Common Stock, upon the terms and subject to the conditions set forth herein;

NOW, THEREFORE, in consideration of the mutual covenants and undertakings contained herein, and subject to and on the terms and conditions set forth herein, the Sellers and the Purchaser agree as follows:

## **ARTICLE I**

### **Certain Definitions**

Section 1.1. *Certain Definitions.* As used in this Agreement, the following terms have the respective meanings set forth below.

"Accountants" means McGladrey & Pullen LLP.

"Action" means any claim, action, suit, arbitration, inquiry, including, without limitation, any proceeding or investigation by or before any governmental authority.

"Affiliate" means, with respect to any Person, any other Person who directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. The term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise, and the terms "controlled" and "controlling" have meanings correlative thereto.

"Agreement" means this Stock Purchase Agreement, together with any schedules or Exhibits annexed hereto.

"Authorizations" has the meaning ascribed to such term in Section 3.12.

"Business" has the meaning ascribed to such term in the first recital to this Agreement.

"Business Day" means a day, other than a Saturday or Sunday, on which commercial banks in New York are open for the general transaction of business.

"Closing" has the meaning ascribed to such term in Section 2.6.

"Closing Date" has the meaning ascribed to such term in Section 2.6.

"Common Stock" has the meaning specified in the recitals to this Agreement.

"Company" has the meaning specified in the recitals to this Agreement.

"Contingent Liabilities" means (i) any Environmental Liabilities, (ii) any Tax Liabilities, (iii) any Scheduled Liabilities; and (iv) any other liabilities or obligations of Company not disclosed herein or in the Financial Statements of any kind or nature, whether known or unknown, absolute, accrued, contingent or otherwise, or whether due or to become due, arising out of events, transactions, facts, acts or omissions which occurred prior to or, on the Closing Date, including without limitation any such liabilities or obligations relating to Company employees. Notwithstanding the foregoing, Contingent Liabilities shall not include liabilities or obligations of the Company as a result of warranties issued by the Company in the ordinary course of business prior to the Closing Date provided (i) the Company and the Sellers had no actual knowledge of such claims prior to the Closing Date, and (ii) the liabilities or obligations of the Company as a result of such warranties arise at least two years or more after the Closing Date. Contingent Liabilities shall also exclude the liabilities or obligations of the Company as a result of such warranties arising within two years after the Closing Date where such liability or obligation is not in excess of the established warranty reserve for the project associated with the liabilities or obligations.

"EBITDA" means earnings before interest, taxes, depreciation and amortization.

"Employee Benefit Plan" has the meaning ascribed to such term in Section 3.19.

"Encumbrance" means any lien, claim, charge, mortgage, security interest, pledge, deed of trust, transfer restriction, easement, servitude, right of first offer or right of first refusal.

"Environmental Laws" means any federal, state, provincial, local law (including common law), statute, ordinance, rule, regulation, license, permit, authorization, approval, consent, court order, judgment, decree, injunction, code, requirement or agreement with any Governmental Authority or third party, (x) relating to pollution (or the investigation or cleanup thereof or the filing of information with respect thereto), human health and safety (including occupational

safety) or the protection of air, surface water, ground water, sediments, drinking water supply, land (including land surface or subsurface), plant and animal life or any other natural resource, or (y) concerning exposure to, or the use, storage, recycling, treatment, generation, transportation, processing, handling, labeling, production or disposal of Hazardous Materials, in each case as amended and as now or hereafter in effect.

"Environmental Liabilities" means any Liabilities of Sellers (or any prior owner of all or part of the Company ) or relating to the Company or the Company's assets (including, without limitation, closure costs, fines, penalties, expenses of investigation and remediation and ongoing monitoring and reasonable attorneys' fees) directly or indirectly based upon, arising out of, resulting from or relating to:

- (i) any actual or potential violation of or liability under any Environmental Laws (including without limitation, any failure to obtain or comply with any permit, license or other operating authorization under provisions of any Environmental Law) and relating to (A) the operation or ownership of the Company, the assets of the Company or the Real Property on or prior to the Closing Date or (B) any other asset owned, leased or operated in connection with the Company on or prior to the Closing Date; or
- (ii) any act, omission, event, condition or circumstance occurring or existing (A) on or prior to the Closing Date and relating to the operation or ownership of the Company, the assets of the Company or (B) on or prior to the Closing Date and relating to any other assets owned, leased, or operated in connection with the Company which for each of clauses (ii)(A) and (B), arise out of or relate to (X) removal, remediation, containment, cleanup or abatement of the presence of any Hazardous Material; (Y) any claim by any Governmental Authority or other third party, including without limitation, tort suits for personal or bodily injury, property damage, claims relating to the off-site disposal of any Hazardous Materials or other materials, or claims for property damage or injunctive relief or (Z) any actual or potential violation of or liability under any Environmental Law.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended.

"Financial Statements" has the meaning ascribed to such term in Section 3.10.

"GAAP" means generally accepted accounting principles as in effect in the United States on the date of this Agreement.

"Governmental Authority" means any national, federal, state, provincial, county, municipal or local government, or the government of any political subdivision of any of the foregoing, or any entity, authority, agency, ministry or other similar body exercising executive, legislative, judicial, regulatory or administrative authority or functions of or pertaining to

government, including any authority or other quasi-governmental entity established to perform any of such functions.

"Hazardous Materials" means pollutants, contaminants, dangerous goods, hazardous or toxic substances, compounds or related materials or chemicals, hazardous materials, hazardous waste, flammables, explosives, radon, radioactive materials, asbestos, urea formaldehyde foam insulation, polychlorinated biphenyls, petroleum and petroleum products (including but not limited to, waste petroleum and petroleum products).

"Income Tax" or "Income Taxes" means any and all taxes based upon or measured by gross or net income, franchises, windfall or other profits, receipts, capital or net worth.

"Indebtedness" means, with respect to any Person, (a) all indebtedness of such Person, whether or not contingent, for borrowed money, (b) all obligations of such Person for the deferred purchase price of property or services, (c) all obligations of such Person evidenced by notes, bonds, debentures or other similar instruments, (d) all indebtedness created or arising under any conditional sale or other title retention agreement with respect to property acquired by such Person (even though the rights and remedies of the seller or lender under such agreement in the event of default are limited to repossession or sale of such property), (e) all obligations of such Person as lessee under leases that have been or should be, in accordance with U.S. GAAP, recorded as capital leases, (f) all obligations, contingent or otherwise, of such Person under acceptance, letter of credit or similar facilities, (g) all Indebtedness of others referred to in clauses (a) through (f) above guaranteed directly or indirectly by such Person, or in effect guaranteed directly or indirectly by such Person through an agreement (i) to pay or purchase such Indebtedness or to advance or supply funds for the payment or purchase of such Indebtedness, (ii) to purchase, sell or lease (as lessee or lessor) property, or to purchase or sell services, primarily for the purpose of enabling the debtor to make payment of such Indebtedness or to assure the holder of such Indebtedness against loss, (iii) to supply funds to or in any other manner invest in the debtor (including any agreement to pay for property or services irrespective of whether such property is received or such services are rendered) or (iv) otherwise to assure a creditor against loss, and (h) all Indebtedness referred to in clauses (a) through (f) above secured by (or for which the holder of such Indebtedness has a n existing right, contingent or otherwise, to be secured by ) any Encumbrance on property (including, without limitation, accounts and contract rights) owned by such Person, even though such Person has not assumed or become liable for the payment of such Indebtedness.

"Indemnified Party" has the meaning specified in Section 8.2.

"Inventory" means all inventories of finished goods, work in process, raw materials, packaging, catalysts, stores, fuels, chemicals, spare parts, supplies and all other materials and supplies related to the Business maintained, held or stored by or for the Company on the Closing Date and any prepaid deposits for any of the same.

"IRS" means the Internal Revenue Service of the United States.

"Law" means any federal, state, local or foreign statute, law, ordinance, regulation, rule, code, order, other requirement or rule of law.

"Liabilities" means any and all debts, liabilities and obligations, whether accrued or fixed, absolute or contingent, matured or unmatured or determined or determinable, including, without limitation, those arising under any Law (including, without limitation, any Environmental Law), Action or Governmental Order and those arising under any contract, agreement, arrangement, commitment or undertaking.

"Material Adverse Effect" means any circumstance, change in, or effect on the Business or the Company that, individually or in the aggregate with any other circumstances, changes in, or effects on, the Business or the Company: (a) is, or reasonably could be expected to be, materially adverse to the business, operations, assets or Liabilities, employee relationships, customer or supplier relationships, prospects, results of operations or the condition (financial or otherwise) of the Company, taken as a whole, or (b) reasonably could be expected to materially and adversely affect the ability of the Purchaser and the Company to operate or conduct the Business in the manner in which it is currently operated or conducted.

"Net Sales" means all revenues and other sums due or to become due from customers of the Company minus any rebates, discounts or other credits provided to such customers.

"Patents" shall mean filed patent applications, including provisional applications, continuations, continuation-in-part applications, divisional applications, reissue applications and re-examination applications, statutory invention registrations, all patents granted pursuant thereto including reissues, re-examinations or rights granting a similar scope of exclusivity, such as supplemental protection certificates, all inventions claimed therein, and all rights therein provided by international treaties and conventions.

"Person" means an individual, partnership, corporation, joint stock company, unincorporated organization or association, trust or joint venture, or a governmental agency or political subdivision thereof.

"Proprietary Rights" means all U.S. and foreign (i) Patents, (ii) trademarks, service marks, trade dress, logos, domain names, trade names and other source identifiers, including the goodwill of the business symbolized thereby or associated therewith, all common law rights thereto, registrations and applications for registrations of the foregoing, and all rights therein provided by international treaties and conventions (collectively, the "Trademarks"), (iii) copyrights, copyright registrations, copyright applications, and all rights therein provided by international treaties and conventions (collectively, the "Copyrights"), (iv) all confidential or proprietary technical, business or other information, including technology, inventions, computer software, data and documentation (including electronic media), product drawings, trade secrets, know-how, customer lists, price lists, manufacturing and production processes, and research and development information, and (v) permits, licenses or other agreements to or from third parties regarding the foregoing, in each case (i) through (v), to the extent used or held for use by any of Sellers, the Company or any of their respective Affiliates in the conduct of the Business (the foregoing provisions shall be inapplicable to any Proprietary Rights of Owl Investment (as

hereinafter defined) which is an Affiliate of D. Holbert, M. Holbert and G. Gustafson and which owns certain intellectual property associated with the "joint infill" and pipeline business), and (vi) all rights to sue or recover and retain damages and costs and attorneys' fees, for past, present and future infringement, dilution, misappropriation or other violations of any of the foregoing.

"Purchase Price" has the meaning ascribed to such term in Article II and any additional amounts payable to Sellers pursuant to Section 2.5.

"Purchaser" has the meaning specified in the recitals to this Agreement.

"Real Property" means all real property and real estate owned or leased by Company and all buildings and improvements thereto, including without limitation, as more particularly referenced in Section 3.7.

"Receivables" means any and all accounts receivable, notes and other amounts receivable by the Company from third parties, including, without limitation, customers, arising from the conduct of the Business or otherwise before the Closing Date, whether or not in the ordinary course, together with all unpaid financing charges accrued thereon.

"Seller" and "Sellers" have the meanings specified in the recitals to this Agreement.

"Shares" has the meaning specified in the recitals to this Agreement.

"Tax" or "Taxes" means any and all taxes, fees, levies, duties, tariffs, imposts, and other charges of any kind (together with any and all interest, penalties, additions to tax and additional amounts imposed with respect thereto) imposed by any government or taxing authority, including, without limitation: taxes or other charges on or with respect to income, franchises, windfall or other profits, gross receipts, property, sales, use, capital stock, payroll, employment, social security, workers' compensation, unemployment compensation, or net worth; taxes or other charges in the nature of excise, withholding, ad valorem, stamp, transfer, value added, or gains taxes; license, registration and documentation fees; and customs duties, tariffs, and similar charges

"Tax Liabilities" means any and all liabilities and obligations, whether absolute, accrued, contingent or otherwise, for any Taxes relating to Company, its operations, income and/or its assets for periods up to the Closing Date (net, however, of any amounts specifically reserved for such Tax Liabilities on the Audited Balance Sheet).

Section 1.2. *Interpretation.* Unless otherwise indicated to the contrary herein by the context or use thereof: (i) the words, "herein," "hereto," "hereof" and words of similar import refer to this Agreement as a whole and not to any particular Section or paragraph hereof; (ii) words importing the masculine gender shall also include the feminine and neutral genders, and vice versa; and (iii) words importing the singular shall also include the plural, and vice versa.

## ARTICLE II

### Purchase and Sale of Shares; Closing

Section 2.1. *Purchase and Sale of Shares.* Upon the terms and subject to the conditions of this Agreement and on the basis of the representations, warranties and agreements contained herein, at the Closing, Sellers shall sell, transfer, convey and deliver the Shares to the Purchaser and the Purchaser shall purchase the Shares.

Section 2.2. *Base Purchase Price.* The base purchase price (the "Base Purchase Price") to be paid by the Purchaser for the Shares shall be [REDACTED] Dollars [REDACTED], subject to adjustment, if any, as set forth in Section 2.4. The Base Purchase Price shall be paid by Purchaser to Sellers at Closing by wire transfer of immediately available funds to the account(s) specified on Exhibit A hereto.

Section 2.3. *Additional Purchase Price.* In addition to the Base Purchase Price, Purchaser shall pay to Sellers payments of additional purchase price of up to an aggregate of [REDACTED] upon Sellers' satisfaction of the following criteria (the "Additional Payment"):

(a) [REDACTED]

i. [REDACTED]

ii. [REDACTED]

iii. [REDACTED]

iv. [REDACTED]

v. [REDACTED]

vi.

[REDACTED]

(c) The Additional Payment shall be subject to the following additional provisions:

- i. Any portion of the Additional Payment due Sellers as a result of the Company's achieving the performance criteria set forth above shall be paid within 90 days of the end of the applicable calendar year by wire transfer of immediately available funds to account(s) designated by Sellers in writing to Purchaser. The audit mechanism set forth in Section 2.4(b) regarding settlement of the Purchase Price shall also apply to disputed matters involving any Additional Payment due Sellers for calendar years 2004 and 2005.
- ii. In order to provide Sellers with the opportunity to achieve the Additional Payment, Purchaser shall operate the Company for the period from the Closing Date through December 31, 2005 (the "Seller Continuation Period") as a separate entity with day to day management and control of the Company vested in Sellers. Such management and control and the ability to achieve the Additional Payment is a material inducement to Sellers entering into this Agreement. All such management and control shall be subject to the reasonable supervision and oversight of, and input from, Purchaser and shall be contingent upon Sellers acting in compliance with all laws, regulations, Purchaser's applicable policies and procedures and Purchaser's Code of Conduct. During the Seller Continuation Period Sellers shall retain the following titles and have such authority as is commensurate with the following offices:

[REDACTED]

President  
Senior Vice President  
Vice President – Technical

Sellers covenant that, during the Seller Continuation Period, (a) Sellers will continue to operate the business, in the normal course consistent with past practice, will endeavor to retain those employees actively employed in the Business, and, except as provided in Section 5.6, will compensate such employees consistent with past practice, (b) Sellers will not engage in any independent systematic program to terminate Employees other than pursuant to the written consent of Purchaser, provided, however, that effective as of the Closing Date, the Company shall have approved a corporate resolution, in the form attached hereto as Exhibit 2.3(c) (ii), adopting a formal severance policy (the "Foam Enterprises, Inc. Severance Policy") to provide a cash severance benefit to any employee who is terminated by the Company during the Seller Continuation Period under circumstances that would entitle such employee to

severance payments under such policy, and (c) Sellers will not, without the prior written consent of the Purchaser, enter into any collective bargaining agreement, shop agreements or other agreements with respect to any of the employees (including the Sellers); grant any increase in the rates of pay or benefits other than in the ordinary course of business; or enter into any new Employee Benefit Plan or make any other change in the employment terms for any of the employees (including the Sellers).

Sellers and Purchaser agree that the transactions contemplated by this Agreement shall not constitute a severance of employment of any of the employees of the Company, and that the employment of the employees by the Company may continue, without interruption, on an at will basis, subject to the terms of any applicable employment agreements. Purchaser agrees that during the Seller Continuation Period, Sellers shall be delegated the sole and exclusive authority as to all personnel and staffing decisions, except to the extent that such personnel or staff are grossly negligent, or are in violation of applicable laws, regulations, Purchaser's applicable policies and procedures or Purchaser's Code of Conduct, or have engaged in conduct which would be subject to termination for "Cause" as defined in the Foam Enterprises Inc. Severance Policy, in which case Purchaser shall have the sole authority as to all decisions regarding such specific personnel, including continued employment with Company.

Notwithstanding the foregoing, at any time during the Seller Continuation Period, the Board of Directors of the Company, at its sole option, may amend the existing Company 401(k) plan (the "Company 401(k) Plan") to (i) terminate or suspend the accrual of benefits under such Plan, and (ii) fully vest participating employees in their benefits accrued under such Plan as of the date of such termination or suspension. Immediately after the effective date of any termination or suspension of benefits as provided in the preceding sentence, each employee of the Company shall be eligible to participate in the BASF Corporation Employee Savings Plan (the "BASF Defined Contribution Plan") in accordance with the terms and conditions of such plan, and each such employee shall receive credit for prior service with the Company for all purposes under the BASF Defined Contribution Plan. Additionally, at any time during the Seller Continuation Period, Purchaser may require Company to terminate its existing employee welfare benefit plan coverages as of their respective termination dates and participate in the corresponding BASF corporation employee welfare benefit plans or programs; provided, however, that, in such event, Sellers and Purchaser shall discuss and agree to the amount of insurance expense or claims charged to the Company for purposes of the EBITDA calculations and the Additional Payment. Except as expressly provided herein, nothing shall restrict or otherwise limit the discretion of the Board of Directors of the Company, with respect to the amendment, termination, or continued operation of any employee benefit plan or program, or any policy or procedure relating to employees.

Additionally, Purchaser may require Company to terminate its existing Comprehensive General Liability and other non-employee welfare benefit plan insurance coverages and participate in the corresponding BASF insurance program; provided, however, that, in such event, Sellers and Purchaser shall discuss and agree to the amount of insurance expense or claims charged to the Company for purposes of the EBITDA calculations and the Additional Payment.

iii. During calendar years 2004 and 2005, Sellers shall have the right to repay or forego any element of Sellers' compensation (including reimbursement for travel and entertainment expense, automobile, etc.) in an effort to assist the Company in achieving the Additional Payment based upon the EBITDA performance criteria.

iv. Raw Materials. Sellers shall cause the Company to (i) purchase all of its raw materials requirements, including isocyanates, isocyanate prepolymers, resin, and polyol blends (collectively, the "Raw Material Products"), from Purchaser and (ii) use its best efforts to convert Company's customers to formulations utilizing the Raw Material Products; notwithstanding the foregoing, the requirement for any such purchases by the Company shall be subject to the reasonable determination by Sellers that such Raw Materials Products are (1) functionally the same or similar as existing raw materials products purchased from other suppliers; (2) the Raw Material Products are acceptable to the Company's customers; and (3) formulations utilizing the Raw Material Products meet or exceed all applicable testing and performance standards (i.e. UL, FM, etc.).

[REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
through [REDACTED]

- v. Other Costs. Sellers and Purchaser agree to discuss and review all other costs and expenses of the Company on at least a monthly basis and consider additional methods to implement cost savings for the Company. Purchaser shall have the right to cause installation of a SAP computer network for the Company, however, the cost thereof shall not be charged against the EBITDA calculations and the Additional Payment.
- vi. Neither Purchaser nor any Affiliate of Purchaser will in any manner solicit the customers, clients and prospects of the Company which were not customers, clients or prospects of Purchaser prior to the Closing Date or otherwise take any action to divert business from the Company to Purchaser or any Affiliate of Purchaser to avoid Purchaser's obligation to pay the Additional Payment under this Section 2.3. As to those customers, clients or prospects that were or are serviced or targeted by both Purchaser and Company, Sellers and Purchaser shall, after the Closing Date, discuss and agree upon in good faith, who should service or solicit such accounts. For purposes of the calculation of the Additional Payment pursuant to this Section 2.3, the Company shall receive credit for the Net Sales decrease, if any, as a result of any decision to redirect the servicing of any such accounts from Company to Purchaser.
- vii. Upon express written request from Sellers or the Company, Purchaser's existing polyurethane systems business agree to share, disclose and cross-license, without charge, formulations, technologies and other trade secrets to facilitate additional sales to customers of both the Company and Purchaser's existing polyurethane systems business. Notwithstanding the foregoing, to the extent that Purchaser is required to pay a royalty fee or other form of compensation for any of the formulations, technologies and other trade secrets shared, disclosed or cross-licensed to Company, such fee shall be passed-through at actual cost to Company. Further, Purchaser's failure to provide adequate information in this respect shall not excuse or diminish Sellers' failure to satisfy the aforementioned criteria in connection with the Additional Payment.

Section 2.4. *Settlement of the Purchase Price.* (a) As soon as practicable, but in no event longer than thirty (30) days after the Closing Date, the Sellers shall deliver to the Purchaser a financial statement of the Sellers' equity as of December 31, 2003 (the "Closing Statement"), which Closing Statement shall be prepared by the Sellers in conformity with GAAP, applied on a basis consistent with the Company's audited financial statements for previous years. The

Closing Statement will demonstrate that the stockholders' equity is not less than [REDACTED] in conformity with Section 3.24 herein.

(b) The Purchaser shall have the right, in its sole discretion, to cause the Closing Statement to be audited (the "Purchaser's Audit") by the Accountants, at the Purchaser's sole expense, provided that any such audit shall be completed within 45 days after the Purchaser receives the Closing Statement. If, as a result of the Purchaser's Audit, the Purchaser reasonably believes that the Closing Statement was not arrived at in accordance with GAAP applied on a consistent basis as were applied in the preparation of the Sellers' audited financial statements, the Purchaser shall so notify the Sellers within 10 business Days after completion of the Purchaser's Audit (the "Audit Notice"). If an Audit Notice is received by the Sellers within the time periods specified above, the Purchaser and the Sellers shall promptly attempt in good faith to reconcile the differences between the Closing Statement and the Purchaser's Audit, and any such reconciliation shall be final, binding and conclusive. If the Purchaser and the Sellers are unable to agree within 30 days after the Sellers receives the Audit Notice to reconcile the differences between the Closing Statement and the Purchaser's Audit, the Purchaser and the Sellers shall jointly select and engage, and shall each pay one-half of the expense of, an independent auditor (other than the Accountants and the independent accountant of the Purchaser) to resolve any remaining differences between the Closing Statement and the Purchaser's Audit and to determine the stockholders' equity as of December 31, 2003. In the event that within 30 days after the Seller receives the Audit Notice the Purchaser and the Seller cannot agree on an independent auditor then the Accountants and the Purchaser's independent accountants shall select the independent auditor, such selection to take place no later than 60 days after the Seller receives the Audit Notice. The determination of the stockholders' equity as of December 31, 2003 by such independent auditor, which shall be completed within 30 days after the selection of such independent auditor, shall be final, binding and conclusive. The stockholders' equity as finally determined pursuant to this Section 2.4 shall constitute the "Closing Stockholders' Equity".

(c) If the Closing Stockholders' Equity is less than the Two Million Dollars as represented in Section 3.24, Sellers shall reimburse the Purchaser in an amount equal to such difference or the Base Purchase Price shall be deemed to have reduced in an equivalent amount. If the Closing Stockholders' Equity is in excess of Two Million Dollars, no additional compensation or purchase price shall be owed or paid by Purchaser to Sellers.

(d) Any amount payable pursuant to Section 2.4(c) shall be paid by certified check or checks payable to the order of the Purchaser, as soon as practicable following the Closing Date and in no event more than five business days following the final determination of the Closing Stockholders' Equity. If Sellers fails to make such payment, Purchaser shall have the right to offset such amount due to the Sellers against any Additional Payment due Sellers pursuant to Section 2.3.

*Section 2.5. Tax Election Under Code Section 338(h)(10); Allocation of the Purchase Price; Make Whole Provision.* (a)(i) With respect to the transactions contemplated by this Agreement, the Sellers and the Purchaser shall jointly make a deemed asset sale election described under Code Section 338(h)(10) (the "338(h)(10) Election") with respect to the

Company, and shall make all corresponding or similar elections under applicable state or local law (collectively, "Elections"). The Sellers and the Purchaser shall file all such Elections on a timely basis, and shall comply with all rules and regulations applicable to such Elections. The Sellers and the Purchaser shall cooperate with each other to take all actions necessary and appropriate (including filing such forms, returns, elections, schedules and documents on a joint or separate basis as may be required) to effect and preserve timely Elections in accordance with applicable Treasury Regulations under Code Section 338 and comparable state and local laws.

(ii) For the purpose of making the Elections, the Purchaser shall compute and allocate the "modified aggregate deemed sales price" among the assets of the Company in accordance with the provisions of Code Section 338 and the Treasury Regulations promulgated thereunder (the "Allocation"), and shall deliver the Allocation to the Sellers' designated representative for review and comment within sixty (60) days after the Date of Closing. The Sellers' designated representative may dispute amounts set forth on the Allocation within fifteen (15) days of delivery of the Allocation by the Purchaser if such representative reasonably believes that any such amounts are materially incorrect. In the event of such a dispute, the parties shall attempt in good faith to resolve their differences with respect to amounts in question, and any resolution shall be final and binding on them. If the parties cannot reach a resolution with respect to all or some of the amounts in dispute within fifteen (15) days following delivery of the Allocation by the Purchaser, the amounts remaining in dispute shall be submitted to an independent accounting firm of international reputation selected by, and mutually acceptable to, the Sellers' designated representative and the Purchaser. If the independent accounting firm so selected determines that the items remaining in dispute are not materially incorrect, then the Purchaser and the Sellers shall be bound by the Allocation as prepared by the Purchaser. If the independent accounting firm so selected determines that one or more of the items remaining in dispute are materially incorrect, then the Sellers and the Purchaser shall be bound by the allocation of such items as determined by the independent accounting firm. The independent accounting firm shall make any such determination within sixty (60) days after submission of the remaining disputed items. Any subsequent adjustments to the modified aggregate deemed sales price shall be reflected in the Allocation in a manner consistent with Code Section 338 and the Treasury Regulations promulgated thereunder. The Sellers shall calculate gain or loss, if any, resulting from the Elections, and the Purchaser shall calculate tax basis in the assets of the Company in a manner consistent with the Allocation (as determined hereunder), and none of the Purchaser, the Sellers, or the Company shall take any position inconsistent with the Allocation in any Tax Return, schedule, estimate or otherwise; provided, however, that the Sellers shall be entitled to subtract its selling costs from the "modified aggregate deemed sales price" for purposes of calculating gain or loss and the Purchaser shall be entitled to add its acquisition costs to the "adjusted grossed-up basis" for purposes of determining the tax basis of the assets of the Company.

(b) In consideration for Sellers' consent to join in the 338(h)(10) Election, Purchaser agrees to "make whole" Sellers by paying to Sellers, as additions to the purchase price, Sellers' expected net, adverse tax ramifications resulting from the 338(h)(10) Election.

(c) Sellers agree to provide Purchaser with any and all documents relative to the determination of Sellers after tax proceeds from the sale of the Shares to Purchaser including

such information as is necessary to determine Sellers' expected net, adverse tax ramifications ("Make Whole Amount"). The Company shall pay any federal and state liabilities (including all built in gains tax) due by the Company resulting from the 338(h)(10) Election as necessary; provided, however that such Tax Liabilities that are an accrued Tax Liability reflected on the Financial Statements of the Company, if any, shall not reduce Closing Stockholder's Equity. Purchaser shall pay to Sellers at Closing, in cash by wire transfer, the estimated Make Whole Amount as additional purchase price. As soon as practicable, but in no event longer than sixty (60) days after delivery of the Allocation, Sellers shall deliver to Purchaser a statement of the actual Make Whole Amount ("Make Whole Statement"), which Make Whole Statement shall be prepared by Sellers and certified as true and correct by the Accountants subject only to (i) recomputation of the Make Whole Amount based upon the Additional Payment paid to Sellers for calendar year 2004 and 2005 pursuant to Section 2.3, as provided below, and (ii) audit by the IRS or applicable state taxing authority, to be final, binding and conclusive. If Purchaser reasonably believes the Make Whole Statement is incorrect, Purchaser shall so notify Sellers within ten (10) business days after delivery of the Make Whole Statement ("Make Whole Notice"). If the Make Whole Notice is received by Sellers within the time period specified above, Purchaser and Sellers shall promptly attempt in good faith to reconcile the differences between the Make Whole Statement and the Make Whole Notice, and any such reconciliation shall, subject only to audit by the IRS, be final, binding and conclusive. If Purchaser and Sellers are unable to agree within thirty (30) days after Sellers receive the Make Whole Notice to reconcile the differences between the Make Whole Statement and the Make Whole Notice, Purchaser and Sellers shall jointly select and engage, and shall each pay one-half (1/2) of the expense of, an independent auditor (other than the Accountants and the independent accountant of Purchaser), to resolve any remaining differences between the Make Whole Statement and the Make Whole Notice. In the event that within thirty (30) days after Sellers receive the Make Whole Notice, Purchaser and Sellers cannot agree on an independent auditor, then the Accountants and Purchaser's independent accountant shall select the independent auditor, such election to take place no later than sixty (60) days after Sellers receive the Make Whole Notice. The determination of the Make Whole Amount as of the Closing Date by such independent auditor, which shall be completed within thirty days (30) after selection of such independent auditor, shall, subject only to (i) recomputation of the Make Whole Amount based upon the Additional Payment paid to Sellers for calendar years 2004 and 2005 pursuant to Section 2.3, as provided below, and (ii) audit by the IRS or applicable state taxing authority, be final, binding and conclusive. Upon final determination of the Make Whole Amount, Sellers shall pay to Purchaser any excess or Purchaser shall pay to Sellers any deficiency, as the case may be. Notwithstanding the foregoing, if upon audit by the Internal Revenue Service, the Make Whole Amount is determined to be other than as determined by the parties or the independent auditor as provided above, Sellers shall pay to Purchaser any excess or Purchaser shall pay to Sellers any deficiency, as the case may be. Purchaser's obligation for payment of the Make Whole Amount shall also include, as additional purchase price, Sellers' expected net, adverse tax ramifications resulting from any Additional Payment pursuant to Section 2.3 of the Agreement. The Make Whole Amount shall be recomputed as soon as practicable, but in no event longer than thirty (30) days after calculation of the amount of each Additional Payment, if any, due to the Sellers for each of calendar years 2004 and 2005 as provided in Section 2.3 of this Agreement. Sellers shall deliver to Purchaser a Make Whole Statement including the recomputed Make Whole Amount. In the event Purchaser reasonably believes the Make Whole Statement is incorrect,

Sellers and Purchaser shall follow the resolution process set forth previously in this Section 2.5(c) for the initial computation of the Make Whole Amount. Upon final determination of the recomputed Make Whole Amount, Sellers shall pay to Purchaser any excess, or Purchaser shall pay to Sellers, any deficiency, as the cash may be. Purchaser agrees to indemnify Sellers and hold Sellers harmless from and against any liability for taxes (including penalty and interest thereon) with respect to the Make Whole Statement and Make Whole Amount, it being acknowledged by Purchaser that Sellers are joining in the 338(h)(10) Election solely at the request of Purchaser. Such indemnity obligation shall continue until such time as Sellers' income tax returns reporting the sale of the Shares become final and binding and not subject to right of audit by the IRS or applicable state taxing authority.

Section 2.6. *Closing.* The closing of the transactions contemplated hereby (the "Closing") shall take place at the offices of Messerli & Kramer, 1800 Fifth Street Towers, 150 S. Fifth Street, Minneapolis, MN 55402-4246, contemporaneous with the execution of this Agreement. The time and date of the Closing is herein called the "Closing Date".

### ARTICLE III

#### Representations and Warranties of the Seller

The Sellers represent and warrant to the Purchaser as follows:

Section 3.1. *Due Authority and Enforceability.* This Agreement constitutes the legal, valid and binding obligations of Sellers, enforceable against Sellers in accordance with its terms. Upon the execution and delivery by Sellers of the Closing Documents as defined in Section 6.2, the Closing Documents will constitute the legal, valid, and binding obligations of Sellers, enforceable against Sellers in accordance with their respective terms. Sellers have the absolute and unrestricted right, power, authority, and capacity to execute and deliver this Agreement and the Sellers' Closing Documents and to perform their obligations under this Agreement and the Sellers' Closing Documents.

Section 3.2. *Stock of the Company; Ownership of the Shares.* (a) The authorized equity securities of the Company consists of 25,000 shares of common stock, par value \$.01, of which 1,000 shares are issued and outstanding and constitute the Shares. Sellers are and will be on the Closing Date the record and beneficial owners and holders of the Shares, free and clear of all Encumbrances.

(b) None of the issued and outstanding shares of Common Stock were issued in violation of any preemptive rights. There are no options, warrants, convertible securities or other rights, agreements, arrangements or commitments of any character relating to the stock of the Company or obligating Seller or the Company to issue or sell any shares of stock of, or any other interest in the Company. There are no outstanding contractual obligations of the Company to repurchase, redeem or otherwise acquire any shares of Common Stock or to provide funds to, or make any investment (in the form of a loan, capital contribution or otherwise) in, any other Person. The Shares constitute all the issued and outstanding stock of the Company and are fully paid and nonassessable. None of the

outstanding equity securities or other securities of Company were issued in violation of the Securities Act or any other Law.

(b) Upon consummation of the transactions contemplated by this Agreement and registration of the Shares in the name of the Purchaser in the stock records of the Company, the Purchaser, assuming it shall have purchased the Shares for value in good faith and without notice of any adverse claim, will own all the issued and outstanding stock of the Company free and clear of all Encumbrances except Encumbrances, if any, created by or through Purchaser. As of the Closing Date and transfer of the Shares, there are no voting trusts, stockholder agreements, proxies or other agreements or understandings in effect with respect to the voting or transfer of any of the Shares.

(c) The stock register of the Company accurately records: (i) the name and address of each Person owning Shares and (ii) the certificate number of each certificate evidencing Shares, the number of shares evidenced by each such certificate, the date of issuance thereof and, in the case of cancellation, the date of cancellation.

Section 3.3. *Organization and Qualification of the Company.* The Company is a S-Corporation duly organized, validly existing and in good standing under the laws of the State of Minnesota, with full power and authority, corporate and other, to own or lease its property and assets and to carry on the Business as presently conducted, and is duly qualified to do business and is in good standing in each jurisdiction in which the Company is currently conducting the Business. The Business is conducted solely through the Company and the Sellers do not own, directly or indirectly, any subsidiaries. However, D. Holbert and M. Holbert, husband and wife, as joint tenants, and Gustafson own 65% and 15% respectively of the issued and outstanding common stock of Owl Investment Corporation f/k/a Floatec Corporation, a Minnesota corporation ("Owl Investment") which is not a subsidiary of the Company.

Section 3.4. *Non-contravention.* Neither the execution and delivery of this Agreement, the instruments of transfer nor the performance by the Sellers of its obligations hereunder and thereunder will (i) contravene any provision contained in the Company's Certificate of Incorporation or by-laws, (ii) except as to the Company's loan documents ("Bank Loan" or "Bank Documents") with U.S. Bank National Association ("U.S. Bank") and equipment leases ("Equipment Leases") with Carlton Financial Corporation and/or assigns ("Carlton"), violate or result in a breach (with or without the lapse of time, the giving of notice or both) of or constitute a default under (A) any contract, agreement, commitment, indenture, mortgage, lease, pledge, note, license, permit or other instrument or obligation or (B) any judgment, order, decree, law, rule or regulation or other restriction of any Governmental Authority, in each case to which the Company is a party or by which it is bound or to which any of its assets or properties are subject, (iii) result in the creation or imposition of any lien, claim, charge, encumbrance, equity, restriction or right on any of the Company's assets or properties, or (iv) except with respect to the Bank Loan and Equipment Leases, result in the acceleration of, or permit any Person to accelerate or declare due and payable prior to its stated maturity, any Liabilities.

Section 3.5. *Corporate Books and Records.* Complete and accurate copies of all such minute books and of the stock register of the Company has been provided by Sellers to Purchaser.

Section 3.6. *No Consents.* Except for the consent of U.S. Bank pursuant to the Bank Documents and Carlton pursuant to the Equipment Leases, no notice to, filing with, or authorization, registration, consent or approval of any Governmental Authority or other Person is necessary for the execution, delivery or performance of this Agreement, the instruments of transfer or the consummation of the transactions contemplated hereby or thereby by the Sellers.

Section 3.7 *Real Property.* The Company does not own any Real Property. The Company leases Real Property at 13630 Watertower Circle, Plymouth, Minnesota 55441, and at 1703 Crosspoint, Houston, Texas 77054. The Company also leases space in certain public warehouses for storage of inventory and in certain public mini-storage facilities for storage of records. To the best of Sellers' knowledge, the Business is not in violation of any building, zoning, environmental, health, occupational safety or other law, ordinance or regulation in respect of its facilities located on the Real Property, structure and equipment or their operations. All plants, structures and buildings of the Business are in good operating condition and fit for operation in the ordinary course of the business (subject to normal wear and tear) with no structural or other defects that could interfere with the conduct of normal operations of such facilities and are suitable for the purposes for which they are currently being used. The Sellers have delivered true and complete copies of any documents relating to the Real Property, including without limitation, existing leases.

Section 3.8 *Personal Property.* The Company has good and marketable title to (or valid leasehold or contractual interests in) all the personal property and assets that it purports to own, lease or contract for (including such personal property and assets located in the facilities operated by Company and/or reflected as owned, leased, or contracted for in the books and records of Company), free and clear of any Encumbrances, except any lien or Encumbrance in favor of U.S. Bank and, as to leased equipment, the lien or Encumbrance of any equipment lessor. All machinery, equipment, furniture, fixtures and other personal property used in the Business is in good operating condition and fit for operation in the ordinary course of the business (subject to normal wear and tear) with no defects that could interfere with the conduct of normal operations of such machinery, equipment, furniture, fixtures and other personal property and are suitable for the purposes for which they are currently being used.

Section 3.9. *Inventory.* Schedule 1 sets forth a true and complete listing of all Inventory used or held for sale in the Business as of December 31, 2003, including, without limitation, raw materials, work-in-process and finished goods. All of the Company's Inventory consists of items which are good and merchantable and of a quantity and quality usable and saleable in the regular and ordinary course of the Business consistent with past practices, except for obsolete items, aged items and items of below-standard quality, all of which have been written off or written down to net realizable value in the Company's balance sheet or on the accounting records of the Company as of December 31, 2003, as the case may be. All Inventory not written off has been priced at the lower of cost or market basis. The Company has good and marketable title to all of such Inventory, free and clear of any Encumbrances, except any lien or encumbrance in favor of

U.S. Bank. The Company is not under any liability or obligation with respect to the return of Inventory in the possession of its customers.

Section 3.10. *Financial Statements.* The Sellers have previously furnished to the Purchaser (i) a true and complete copy of the Company's balance sheet as of December 31, 2002, and the related statements of income, operations, cash flows and changes in stockholder's equity for each of the years in the three (3) year period then ended, certified by the Accountants, and (ii) a true and complete copy of the Company's unaudited balance sheet as of December 31, 2003, and the related unaudited statements of income, operations, cash flows and changes in stockholder's equity for the twelve (12) month period then ended, certified by the Company's chief financial officer (collectively, the "Financial Statements"). The Financial Statements have been prepared in conformity with GAAP, applied on a consistent basis and present fairly the financial condition and results of operations of the Company as of and for the periods included therein.

Section 3.11. *Absence of Certain Developments.* Since December 31, 2003, there has not been any material adverse change, or any development which could reasonably be expected to result in a prospective material adverse change, in the business, financial condition, results of operations or the prospects (financial and other) of the Business, taken as a whole. Since December 31, 2003, the Company has conducted the Business in the ordinary and usual course consistent with past practices and has not (i) sold, leased, transferred or otherwise disposed of any of the assets of the Business (other than dispositions in the ordinary course of business consistent with past practices and other than the transfer of certain Company-owned automobiles to Sellers), (ii) terminated or amended in any material respect any contract or lease to which the Company is a party or to which it is bound or to which its properties are subject, (iii) suffered any material loss, damage or destruction whether or not covered by insurance, (iv) made any change in the accounting methods or practices it follows, whether for general financial or tax purposes, (v) incurred any liabilities (other than in the ordinary course of business) none of which, individually or in the aggregate, are material, (vi) incurred, created or suffered to exist any Encumbrances, except for any encumbrance in favor of U.S. Bank, on the assets of the Business or created in the ordinary course of business, none of which, individually or in the aggregate, are material, (vii) increased the compensation payable or to become payable to any of the officers or employees of the Business or increased any bonus, severance, accrued vacation, insurance, pension or other Employee Benefit Plan, payment or arrangement made by the Company for or with any such officers or employees, other than increases in compensation generally payable to employees as a whole in the ordinary course of business consistent with past practices, (viii) suffered any labor dispute, strike or other work stoppage, (ix) made or obligated itself to make any capital expenditures in excess of \$5,000 individually or in the aggregate, (other than in the ordinary course of business and consistent with past practices) (x) entered into any contract or other agreement requiring the Company to make payments in excess of \$5,000 per annum, individually or in the aggregate, other than in the ordinary course of business consistent with past practices, or (xi) entered into any agreement to do any of the foregoing other than in the ordinary course of business consistent with past practices.

Section 3.12. *Governmental Authorizations; Licenses; Etc.* The Business has been operated in compliance with all applicable laws, rules, regulations, codes, ordinances, orders,

policies and guidelines of all Governmental Authorities, including but not limited to, those related to: fire, safety, labeling of products, pricing, sales or distribution of products, antitrust, trade regulation, trade practices, sanitation, land use, employment or employment practices, energy and similar laws. The Company has all permits, licenses, approvals, certificates and other authorizations, and has made all notifications, registrations, certifications and filings with all Governmental Authorities, necessary or advisable for the operation of the Business as currently conducted by the Company. There is no action, case or proceeding pending or, to the Seller's best knowledge, threatened by any Governmental Authority with respect to (i) any alleged violation by the Company or its Affiliates of any law, rule, regulation, code, ordinance, order, policy or guideline of any Governmental Authority, or (ii) any alleged failure by the Company or its Affiliates to have any permit, license, approval, certification or other authorization required in connection with the operation of the Business. No notice of any violation of such laws has been received by the Seller, Company or any Affiliate of the Company and neither the Seller nor Company has received any notice that the products distributed or sold by the Business are not in compliance with, or do not meet the standards of, all applicable laws. Schedule 2 sets forth a true and complete list of all permits, licenses, approvals, certificates, registrations and other authorizations relating to the Business (the "Authorizations"). Such Authorizations are in full force and effect and neither the Sellers nor Company have received notification of the suspension or cancellation of any thereof. To the Sellers' best knowledge, the transfer of Shares will not result in or trigger a cancellation or termination of any of the Authorizations or require consent to transfer any of the Authorizations to Purchaser.

Section 3.13. *Litigation.* Except as set forth on Schedule 3, there are no lawsuits, actions, proceedings, claims, orders or investigations by or before any Governmental Authority pending or, to the Sellers' best knowledge, threatened against the Company relating to the Business, the assets of the Business, or any product alleged to have been manufactured or sold by the Business (or any of their respective officers, directors, shareholders or members in connection with the Business of the Company) or seeking to enjoin the transactions contemplated hereby and except as set forth on Schedule 3, there are no facts or circumstances known to the Sellers that could result in a claim for damages or equitable relief which, if decided adversely, could, individually or in the aggregate, have a Material Adverse Effect. Except as set forth on Schedule 3, Company has not been a party to any civil, criminal or administrative proceeding during the past five years except for matters in which there was not any amount of settlement or judgment in excess of \$10,000. Company is not subject to any judgment, decree, injunction, rule or order of any Governmental Authority which is (a) material to the operations of Company, or (b) reasonably likely to cause a material limitation on Purchaser's ability to operate the Business of the Company or the assets after the Closing.

Section 3.14. *Undisclosed Liabilities.* Other than those reflected in the Financial Statements and unknown or contingent liabilities for warranty obligations of the Company issued or incurred in the ordinary course of business and consistent with past practice, there are no liabilities of the Company of any kind or nature whatsoever, whether known or unknown, absolute, accrued, contingent or otherwise, or whether due or to become due, other than liabilities incurred in the ordinary course of business and consistent with past practices since the date of the Financial Statements and there exists no facts or circumstances (other than general economic conditions and other than any subsequent liability for warranty obligations issued or

incurred in the ordinary course of business and consistent with past practice) that could reasonably be expected to result in any such liability.

Section 3.15. *Taxes.* (a) (i) All Returns in respect of Taxes required to be filed with respect to the Company have been timely filed; (ii) all Taxes required to be shown on such Returns or otherwise due have been timely paid; (iii) all such Returns are true, correct and complete in all material respects; (iv) no adjustment relating to such Returns has been proposed formally or informally by any Tax authority and, to the best knowledge of the Sellers (after due inquiry), no basis exists for any such adjustment; (v) there are no pending or, to the best knowledge of the Sellers (after due inquiry), threatened actions or proceedings for the assessment or collection of Taxes against the Company; (vi) no consent under Section 341(f) of the Code has been filed with respect to the Company; (vii) there are no Tax liens on any assets of the Company; (viii) no Seller and no Affiliate of any Seller is a party to any agreement or arrangement that would result, separately or in the aggregate, in the payment of any "excess parachute payments" within the meaning of Section 280G of the Code; (ix) no acceleration of the vesting schedule for any property that is substantially unvested within the meaning of the regulations under Section 83 of the Code will occur in connection with the transactions contemplated by this Agreement; (x) the Company has not been at any time a member of any partnership or joint venture or the holder of a beneficial interest in any trust for any period for which the statute of limitations for any Tax has not expired; (xi) the Company has not been a United States real property holding corporation within the meaning of Section 897(c)(2) of the Code during the applicable period specified in Section 897(c)(1)(A)(ii) of the Code; (xii) the Company is not subject to any accumulated earnings tax penalty or personal holding company tax; (xiii) a valid election under Section 1362 of the Code has been in effect (and has not been revoked or terminated) for the Company for each of its taxable years beginning January 1, 1997; and (xiv) the Sellers have properly reported, on their U.S. federal income tax returns for each taxable year, their pro rata share of the Company's income, loss, deductions and credits (including nonseparately computed income or loss) in accordance with Section 1366 of the Code, and paid any Tax due in respect thereof.

(b) Except as disclosed with reasonable specificity in Schedule 4: (i) there are no outstanding waivers or agreements extending the statute of limitations for any period with respect to any Tax to which the Company may be subject; (ii) the Company has not (A) or is projected not to have an amount includible in its income for the current taxable year under Section 951 of the Code, (B) had an unrecaptured overall foreign loss within the meaning of Section 904(f) of the Code or (C) participated in or cooperated with an international boycott within the meaning of Section 999 of the Code; (iii) the Company does not have any income reportable for a period ending after the Closing Date but attributable to a transaction (e.g., an installment sale) occurring in or a change in accounting method made for a period ending on or prior to the Closing Date which resulted in a deferred reporting of income from such transaction or from such change in accounting method; (iv) there are no requests for information currently outstanding that could affect the Taxes of the Company; (v) there are no proposed reassessments of any property owned by the Company or other proposals that could increase the amount of any Tax to which the Company would be subject; (vi) the Company is not obligated under any agreement with respect to industrial development bonds or similar obligations, with respect to which the excludability from gross income of the holder for federal income tax purposes could

be affected by the transactions contemplated hereunder; and (vii) no power of attorney that is currently in force has been granted with respect to any matter relating to Taxes that could affect the Company.

(c) The Sellers have delivered to the Purchaser correct and complete copies of all federal, state and foreign income, franchise and similar tax Returns, examination reports, and statements of deficiencies assessed against or agreed to by the Company since December 31, 2000.

(d) The Financial Statements of the Company provide for reserves and allowances that are adequate in amount to satisfy all Liabilities for all Taxes of the Company through the periods covered by such Financial Statements as the case may be.

Section 3.16. *Insurance.* Schedule 5 sets forth a true and correct list of all insurance policies or binders maintained by the Company on the date hereof relating to the Business or the assets of the Business showing, as to each policy or binder, the carrier, policy number, coverage limits, expiration dates, annual premiums, deductibles or retention levels and a general description of the type of coverage provided. Such policies and binders are, and at all times prior to the Closing Date will be, in full force and effect. At all times prior to the Closing Date, the Company has maintained appropriate and adequate insurance policies covering the assets of and all aspects of the Business.

Section 3.17. *Environmental Matters.* (i) The Business, up to the date of Closing, has been conducted in compliance with all Environmental Laws, (ii) the Real Property leased by the Business (including, without limitation, soil, groundwater or surface water on, under or adjacent to the properties and buildings thereon) (the "Affected Property") do not contain any Hazardous Substance other than as permitted under applicable Environmental Laws, (iii) the Sellers or Company has not received any notice from any Governmental Authority that the Sellers or Company may be a potentially responsible party in connection with any waste disposal site or facility used, directly or indirectly, by or otherwise related to the Business, (iv) no reports have been filed, or have been required to be filed, by the Company concerning the release of any Hazardous Substance or the violation of any Environmental Law on or at the properties used in the Business, (v) no Hazardous Substance has been disposed of, transferred, released or transported from the Affected Property, other than as permitted under applicable Environmental Law pursuant to appropriate regulations, permits or authorizations, (vi) there have been no environmental investigations, studies, audits, tests, reviews, or other analyses conducted by or which are in the possession of the Sellers or Company relating to the Business, true and correct copies of which have not been delivered to the Purchaser prior to the date hereof, (vii) there are no underground storage tanks on, in or under any of the properties presently leased by the Business and no underground storage tanks have been closed or removed from such properties, (viii) the Sellers or Company has not presently incurred, and the Affected Property is not presently subject to, any liabilities (fixed or contingent) relating to any suit, settlement, judgment or claim asserted or arising under any Environmental Law, (ix) all Environmental Laws in existence at the time the Affected Property was acquired were complied with, and (x) there are no civil, criminal or administrative actions, suits, demands, claims, hearings, investigations or other proceedings pending or threatened against the Business or the Seller with respect to the

Business relating to any violations, or alleged violations, of any Environmental Law, and neither the Business nor the Sellers have received any notices, demand letters or requests for information, arising out of, in connection with, or resulting from, a violation, or alleged violation, of any Environmental Law, and neither the Business nor the Sellers have been notified by any Governmental Authority or any other Person that the Business has or may have, any liability pursuant to any Environmental Law.

Section 3.18. *Employee Matters.* (a) Schedule 6 contains a true and correct list of the names and current annual salaries (including bonus and commission rates) for the employees currently employed by the Company in the conduct of the Business, including any agreement concerning such employees and a description of the rate and nature of all current compensation payable by the Company to each employee.

(b)(i) the Company has not entered into any collective bargaining agreements with respect to the employees, (ii) there are no written personnel policies applicable to the employees generally, other than employee manuals, copies of which have previously been provided to the Purchaser, (iii) there is no labor strike, dispute, slowdown or work stoppage or lockout pending or, to the best of the Company's knowledge, threatened against or affecting the Business and during the past three years there has been no such action, (iv) no union organization campaign is in progress with respect to any of the employees, and to the Sellers' best knowledge, no question concerning representation exists respecting such employees, (v) there is no unfair labor practice, charge or complaint pending or, to the Sellers' best knowledge, threatened against the Company arising out of the conduct of the Business, and (vi) the Company has not entered into any agreement, arrangement or understanding restricting its ability to terminate the employment of any or all of its employees at any time, for any lawful or no reason, without penalty or liability, (c) the Company is in compliance with all applicable Laws relating to the employment of labor, including those related to wages, hours, collective bargaining and the payment and withholding of taxes and other sums as required by the appropriate Governmental Authority and have withheld and paid to the appropriate Governmental Authority or are holding for payment not yet due to such Governmental Authority all amounts required to be withheld from employees of the Company, and is not liable for any arrears of wages, taxes, penalties or other sums for failure to comply with any of the foregoing, (d) the Company has paid in full to all their respective employees or adequately accrued for in accordance with U.S. GAAP all wages, salaries, commissions, bonuses, benefits and other compensation due to or on behalf of such employees, (e) there is no claim with respect to payment of wages, salary or overtime pay that has been asserted or is now pending, threatened before any Governmental Authority with respect to any persons currently or formerly employed by the Company, (f) neither the Company nor the Sellers is a party to, or otherwise bound by, any consent decree with, or citation by, any Governmental Authority relating to employees or employment practices, (g) there is no charge or proceeding with respect to a violation of any occupational safety or health standards that has been asserted or is now pending or threatened with respect to the Company, and (h) there is no written charge of discrimination in employment or employment practices, as respects any legally protected category, for any reason, including, without limitation, age, gender, race or religion, which has been asserted or is now pending or threatened before the United States Equal Employment Opportunity Commission, or any other Governmental Authority in any jurisdiction in which the Company.

(c) Laws Relating to Disability. The Company is in compliance with the requirements of the Americans With Disabilities Act.

(d) WARN Act. The Company does not employ the requisite number of employees to be jurisdictional under the Worker Adjustment Retraining Notification Act and the regulations promulgated thereunder ("WARN"). The Company is in compliance with all applicable federal, state or local law relating to (i) mass layoffs and the closing of plants and facilities, and (ii) any requirements to give prior notice of such layoffs or closings to affected employees, and has incurred no obligation under such laws.

Section 3.19. *Employee Benefit Plans.* (a) Schedule 7 lists all bonus, deferred compensation, pension, retirement, profit-sharing, thrift, savings, employee stock ownership, stock bonus, stock purchase, restricted stock and stock option plans, all employment or severance contracts, health and medical insurance plans, life insurance and disability insurance plans, other material employee benefit plans, contracts or arrangements to which the Company is a party or under with respect to which the Company has incurred or may incur any obligation, or which are maintained, contributed to or sponsored by the Company for the benefit of any current or former employee, officer or director of the Company including, but not limited to, "employee benefit plans" within the meaning of Section 3(3) of ERISA (the "Employee Benefit Plans"). Each Employee Benefit Plan is in writing and Seller has furnished the Purchaser with a complete and accurate copy of each Plan and a complete and accurate copy of each material document prepared in connection with each such Plan including, without limitation, and, if applicable, (i) a copy of each trust agreement, insurance contract or other funding arrangement, (ii) each summary plan description and summary of material modifications, (iii) the IRS Form 5500 filed with respect to the most recent plan year, (iv) the most recently received IRS determination letter for each such Plan, and (v) the most recently prepared actuarial report and financial statement in connection with each such Plan. No Employee Benefit Plan is or was collectively bargained for or has terms requiring assumption by the Purchaser or its Affiliates. The Employee Benefit Plans which are described in Section 3(3) of ERISA (the "ERISA Plans") are in compliance with all provisions of ERISA and, if intended to be tax qualified, Sections 401(a) and 501(a) of the Code. All ERISA Plans which are intended to qualify under Section 401(a) of the Code have been submitted to and approved under Section 401(a) of the Code by the Internal Revenue Service or, alternatively, the applicable remedial amendment period with respect to any such ERISA Plan will not have ended prior to the Closing Date. No liability under Subtitle C or D of Title IV of ERISA has been or is expected to be incurred by the Company with respect to any ongoing, frozen or terminated "single-employer plan," within the meaning of Section 4001(a)(15) of ERISA, currently or formerly maintained by any of them, or the single-employer plan of any entity which is considered one employer with the Company under Section 4001 of ERISA or Section 414 of the Code (an "ERISA Affiliate"). The Company has not incurred and does not expect to incur any withdrawal liability with respect to a multi-employer plan under Subtitle E of Title IV of ERISA (regardless of whether based on contributions of an ERISA Affiliate). All contributions required to be made under the terms of any Employee Benefit Plan have been timely made or have been duly provided for. No single-employer plan of an ERISA Affiliate has an "accumulated funding deficiency" (whether or not waived) within the meaning of Section 412 of the Code or Section 302 of ERISA. The Company has not provided, and is not

required to provide, security to any single-employer plan of an ERISA Affiliate pursuant to Section 401(a) of the Code. The Company or an ERISA Affiliate has paid all premiums (together with any interest, charges or penalties for late payment thereon) required to be paid to the Pension Benefit Guaranty Corporation with respect to each ERISA Plan for which such premiums are required. No ERISA Plan has engaged in any transaction described in Section 406 or 407 of ERISA or Section 4975 of the Code. Each ERISA Plan has at all times complied with the bonding requirements of Section 412 of ERISA. Each Employee Benefit Plan can be unilaterally terminated by the Company on no more than 60 days notice.

(b) All contributions, premiums or payments required to be made with respect to any Plan are fully deductible for income tax purposes. The Company has not received notice that any such deduction previously claimed has been challenged by any government entity.

(c) Except as disclosed in Schedule 7, neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated hereby will, either alone or in conjunction with any other event, (i) result in any payment becoming due or increase the amount or value of compensation or benefits due, any current or former employee, including, without limitation any severance payment or benefit, (ii) increase any benefits otherwise payable under any Employee Benefit Plan or (ii) result in the acceleration of the time of payment, funding or vesting of any such benefit.

Section 3.20. *Proprietary Rights.* (a) All of the Company's Proprietary Rights are listed in Schedule 8, which constitutes all of the intellectual property used by the Company, or for which the Company has any rights but is not using but could be used by the Company in the Business, as of the Closing. Except as disclosed therein, the Company owns and possesses all right, title and interest in, and upon consummation of the transactions contemplated hereby, the Purchaser will own all right, title and interest in, the Proprietary Rights. The transactions contemplated by this Agreement will have no material adverse effect on the Company's right, title and interest in the Proprietary Rights.

(b) Except as set forth in Schedule 8, no claim by any third party contesting the validity, enforceability, use or ownership of any Proprietary Right has been made, is currently pending or is threatened. Except as set forth in Schedule 8, the Seller or Company has not received any notice of, nor is it aware of any fact which indicates a likelihood of, any infringement or misappropriation by, or conflict with, any third party with respect to any of the Proprietary Rights. The Seller or Company has not infringed, misappropriated or otherwise conflicted with any intellectual property rights of any third parties, nor is it aware of any infringement, misappropriation or conflict which will occur as a result of the continued operation of the Business as now conducted.

(c) The Company has taken all reasonable actions to protect the registered Proprietary Rights, including the validity and enforceability thereof except for patent and trademark applications which have been abandoned or discontinued by the Company and have been disclosed to Purchaser. Except for abandoned or discontinued applications which have been disclosed to Purchaser, the Proprietary Rights have not been adjudicated invalid or

unenforceable in whole or in part and the transaction contemplated by this Agreement will have no material adverse effect on the Proprietary Rights.

(d) Except as set forth on Schedule 8, the Company is the exclusive owner of the entire and unencumbered right, title and interest in and to each item of the Proprietary Rights free and clear of any encumbrances and is entitled to use the Proprietary Rights.

(e) (i) No unresolved claim by any third party contesting the validity, enforceability, use or ownership of any of the Proprietary Rights has been made, is currently pending or is threatened; (ii) the Company has not received any notice of, nor are they aware of, any infringement, dilution, violation or misappropriation by, or conflict with, any third party with respect to any of the Proprietary Rights; and (iii) except as set forth on Schedule 8, the Company has not received any written notice that it has infringed, misappropriated, violated, diluted or otherwise conflicted with any intellectual property rights of any third parties, nor it is aware of any infringement, misappropriation, violation, dilution or conflict which will occur as a result of the continued operation of the Business as currently conducted.

Section 3.21. *Accounts Receivable.* Schedule 9 sets forth a true and complete listing of all Accounts Receivable as of December 31, 2003 and an aging schedule reflecting the aggregate amount of all Accounts Receivable outstanding (i) 30 days or less, (ii) more than 30 days but less than or equal to 60 days, (iii) more than 60 days but less than or equal to 90 days, and (iv) more than 90 days. All of the Accounts Receivable have arisen in the ordinary and regular course of business, represent bona fide transactions with third parties and are not subject to any counterclaims or offsets (except for (i) those for which adequate reserves have been established in accordance with GAAP, (ii) payment discounts, and (iii) rebates to customers reflected as accrued liabilities in the Company's Financial Statements), have been billed and are due under the Company's payment terms (but not necessarily collected) within 90 days of the date created.

Section 3.22. *Contracts.* (a) Schedule 10 describes all contracts (except for usual and ordinary purchase orders executed in the normal course of Business), agreements, leases, commitments, instruments, plans, permits or licenses, whether written or oral, with respect to the Business to which the Company is a party or is otherwise bound, of the type described below (the "Contracts"):

(i) all agreements or commitments for the sale by the Business of products or services, or the purchase by the Business of raw materials, products or services, other than those that are for amounts not to exceed \$1,000;

(ii) all agreements or commitments for the purchase by the Business of machinery, equipment or other personal property other than those that are for amounts not to exceed \$1,000;

(iii) any arrangement (or group of arrangements) involving more than \$1,000 which creates, incurs, assumes, or guarantees indebtedness or which imposes an Encumbrance on any of the assets of the Business.

(iv) any arrangement under which the consequences of a default or termination prior to expiration of its terms could reasonably be expected to have a Material Adverse Effect;

(v) all capitalized leases, pledges, conditional sale or title retention agreements;

(vi) all employment agreements and commitments and all consulting or severance agreements or arrangements;

(vii) all agreements relating to the consignment or lease of personal property (whether the Company is lessee, sublessee, lessor or sublessor), other than such agreements that provide for annual payments of less than \$2,500;

(viii) all license, secrecy, royalty or other agreements relating to the Proprietary Rights;

(ix) all agreements prohibiting the Company or Sellers from freely engaging in the Business in any geographic area;

(x) all agreements to provide rebates to customers of the Business;

(xi) any agreements other than those covered by clauses (i) through (x) above relating to the Business and involving payment or receipt of more than \$2,500 in the aggregate and all agreements which otherwise materially affect the Business; and

(xii) any other arrangement (or group of related arrangements) relating to the Business and involving payment or receipt of more than \$2,500 not entered into in the ordinary course of business or which does not terminate or can not be terminated within twelve (12) months of the Closing Date without payment or penalty related thereto.

(b) To the best of Sellers' knowledge, the transfer of Shares will not trigger a cancellation or termination of any of the Contracts or require consent to transfer any of the Contracts to Purchaser. To the best of Sellers' actual knowledge, none of the other parties to any such Contracts intends to terminate or materially alter the provisions of such Contracts either as a result of transactions contemplated hereby or otherwise.

(c) The Company is not in, nor has the Sellers or Company given or received notice of, any default or claimed, purported or alleged default, or facts that, with notice or lapse of time, or both, would constitute a default (or give rise to a termination right) on the part of any party in the performance of any obligation to be performed under any of the Contracts.

(d) True and complete copies of all written Contracts, including any amendments thereto, have been delivered to the Purchaser and such documents constitute the legal, valid and binding obligation of the Company and, to the best of the Seller's knowledge, each other party purportedly obligated thereunder.

Section 3.23 *Customers and Suppliers*. Schedule 11 sets forth a list of (a) the twenty (20) largest customers of the Company in terms of gross sales during the fiscal year ended 2003 ("Top Customers") and (b) the ten (10) largest suppliers of the Company in terms of purchases during the fiscal year ended 2003 ("Top Suppliers"). (a) No Top Customer has notified or otherwise indicated to the Sellers or Company that it will stop, or decrease the rate of, its purchases of materials, products or services from the Company, and no Top Customer has, during 2002 or 2003, ceased or materially decreased its purchases of any such materials, products or services from the Company; and (b) no Top Supplier of the Business has notified or otherwise indicated to the Seller or Company that it will stop, or decrease the rate of, or, other than publicly announced generally applicable price increases or arm's length negotiated pricing, materially increase the cost of, its supply of materials, products or services used by the Business, and no Top Supplier has, during 2002 or 2003, ceased, materially decreased the rate of or, other than publicly announced generally applicable price increases or arm's length negotiated pricing, materially raised the cost of, any such materials, products or services. Except as otherwise set forth on Schedule 11, the Company is not a party to any contract or commitment to purchase products from or distribute products on behalf of any Top Supplier, other than contracts or commitments that are terminable by Company in its sole discretion, without cost or penalty, upon notice from the Company.

Section 3.24. *Shareholders' Equity*. As of December 31, 2003, the Closing Stockholders' Equity will be not less than \$2,000,000, as adjusted pursuant to Section 2.4(c).

Section 3.25. *Ability to Conduct Business*. The consummation of the transactions contemplated hereby will enable the Purchaser to conduct the Business substantially as it is currently being conducted.

Section 3.26. *Disclosure*. No representation or warranty made by the Seller in this Agreement, any Schedule, any Exhibit or any certificate delivered, or to be delivered, by or on behalf of the Sellers pursuant hereto contains or will contain any untrue statement of a material fact or omits or will omit to state a material fact necessary to make the statements contained herein or therein not misleading. There is no fact which the Sellers has not disclosed to the Purchaser in writing which the Sellers presently believes has or may have a material adverse effect on the properties, assets, business, operations, financial condition or prospects of the Sellers or the Business or on the ability of the Sellers to perform its obligations under this Agreement, or the instruments of transfer.

Section 3.27. *Absence of Questionable Payments*. Neither the Sellers nor the Company, nor any director, officer, employee, agent, representative or other Person acting on behalf of the Company has: (i) used any corporate or other funds for unlawful contributions, payments, gifts or entertainment, or made any unlawful expenditures relating to political activities to government officials or others, or (ii) accepted or received any unlawful contributions, payments, gifts or expenditures.

Section 3.28. *Brokers*. Sellers shall be responsible for payments to any broker, finder, investment banker or financial advisor retained by Sellers or the Company in connection with this Agreement, or any of the transactions contemplated hereby and Sellers agree to indemnify

and hold harmless Purchaser from any claims for payment by such persons. Purchaser shall be responsible for payments to any broker, finder, investment banker or financial advisor retained by Purchaser in connection with this Agreement, or any of the transactions contemplated hereby and Purchaser agrees to indemnify and hold harmless Sellers from any claims for payment by such persons.

Section 3.29. *Transactions with Insiders.* Except as set forth on Schedule 12, none of the Sellers (a) owns, directly or indirectly, any debt, equity or other interest or investment in any Person (other than a Person with a class of publicly traded securities) which is a competitor, lessor, lessee, customer or supplier of Company; (b) has any interest in or owns any property or right used in the conduct of the operations of the Company; (c) has lent or advanced any money to, or borrowed any money from (in each case where the money lent, advanced or borrowed currently is outstanding), or guaranteed or otherwise become liable for any outstanding indebtedness or other outstanding obligations of the Company or (d) is a party to any Company agreement.

## ARTICLE IV

### Representations and Warranties of the Purchaser

The Purchaser represents and warrants to the Sellers as follows:

Section 4.1. *Organization.* The Purchaser is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware and has full power and authority, corporate and other, to own or lease its property and assets and to carry on its business as presently conducted.

Section 4.2. *Authorization.* The Purchaser has full power and authority, corporate and other, to execute and deliver this Agreement, the instruments of transfer and to perform its obligations hereunder and thereunder, all of which have been duly authorized by all requisite corporate action. This Agreement and the instruments of transfer have been or, at the time of delivery will be, duly authorized, executed and delivered by the Purchaser and constitutes or, at the time of delivery will constitute, a valid and binding agreement of the Purchaser, enforceable against the Purchaser in accordance with its terms.

Section 4.3. *Non-contravention.* The Purchaser is not subject to any provision of its Certificate of Incorporation or by-laws or any agreement, instrument, law, rule, regulation, order, decree or judgment of any Governmental Authority or other restriction that would prevent the consummation of the transactions contemplated by this Agreement, or the instruments of transfer.

Section 4.4. *No Consents.* No notice to, filing with, or authorization, registration, consent or approval of any Governmental Authority or other Person is necessary for the execution, delivery or performance of this Agreement, the instruments of transfer or the consummation of the transactions contemplated hereby and thereby by the Purchaser.

## ARTICLE V

### Covenants and Agreements

Section 5.1. *Closing Documents.* The Sellers shall, prior to or on the Closing Date, execute and deliver, or cause to be executed and delivered to the Purchaser, the documents or instruments described in Section 6.2. The Purchaser shall, prior to or on the Closing Date, execute and deliver, or cause to be executed and delivered, to the Sellers, the documents or instruments described in Section 6.3.

Section 5.2. *Access to Records after the Closing.* After the Closing, upon request, the Sellers and its representatives shall be permitted reasonable access, during normal business hours, to and to make inspection of the books and records of the Sellers transferred to the Purchaser hereunder so long as such records are maintained by the Purchaser in accordance with its customary records retention policy and to make copies thereof as is reasonably necessary to allow the Sellers to obtain information in the Purchaser's possession (but excluding attorney work product or other privileged communications). The Sellers shall pay the Purchaser's out-of-pocket costs and expenses in connection with satisfying such requests.

#### Section 5.3. *Taxes.*

(a) The Sellers shall pay any transfer, sales, purchase, use or similar tax under the laws of any Governmental Authority arising out of or resulting from the sale and purchase of the Shares, if any; provided, however, the Sellers shall not be obligated for payment of federal and state Tax Liabilities (including all built in gains tax) due by the Company resulting from the 338(h)(10) Election as provided in Section 2.5. If any taxes are due and payable, the Sellers shall prepare and file the required tax returns and other required documents with respect to the taxes and fees required to be paid by it pursuant to the preceding sentence and shall promptly provide the Purchaser with evidence of the payment of such taxes and fees.

(b) The Sellers shall (i) prepare and file all tax returns reporting the income attributable to the Shares or the operation of the Business for all periods ending prior to or on the Closing Date including the final interim period S Corporation income tax return reflecting income through the Closing Date; (ii) prepare and file all income tax returns reporting the income of the Sellers arising on the Closing Date from the sale to the Purchaser of the Shares, (iii) be responsible for the conduct of all tax examinations relating to the tax returns referred to in (i) and (ii) above, and (iv) pay all taxes attributable to the Shares or the operation of the Business due with respect to the tax returns referred to in (i) and (ii) above. Seller shall cause the Company's current Subchapter S election to remain in full force and effect through the Closing Date in which event the Company shall make Subchapter S distributions to the Shareholders, at closing, in the amount of not less than forty (40%) percent of the taxable income of the Company for the period January 1, 2004, through the Closing Date (however, any such distributions shall not reduce 2004 EBITDA for purposes of Section 2.3 and the calculation of any Additional Payment due Sellers. The Purchaser shall prepare and file all tax returns reporting the income attributable to the ownership of the Shares and the operation of the Business for all periods

beginning after the Closing and shall be liable for and pay all taxes due in respect of such tax returns.

(c) Contests. (i) After the Closing, the Purchaser shall promptly notify the designated representative of the Sellers in writing of any written notice of a proposed assessment or claim in an audit or administrative or judicial proceeding of the Purchaser, or the Company which, if determined adversely to the taxpayer, would be grounds for indemnification under Article VIII; provided, however, that a failure to give such notice will not affect the Purchaser's right to indemnification under Article VIII except to the extent, if any, that, but for such failure, the Sellers could have avoided all or a portion of the Tax liability in question.

(ii) In the case of an audit or administrative or judicial proceeding that relates to periods ending on or before the Closing Date, provided that the Sellers' designated representative acknowledges in writing the liability of the Sellers under this Agreement to hold the Purchaser, and the Company harmless against the full amount of any adjustment which may be made as a result of such audit or proceeding that relates to periods ending on or before the Closing Date, the Sellers' designated representative shall have the right at the Sellers' expense to participate in and control the conduct of such audit or proceeding but only to the extent that such audit or proceeding relates solely to a potential adjustment for which the Sellers' designated representative has acknowledged the liability of the Sellers. The Purchaser also may participate in any such audit or proceeding and, if the Sellers' designated representative does not assume the defense of any such audit or proceeding, the Purchaser may defend the same in such manner as it may deem appropriate, including, but not limited to, settling such audit or proceeding after giving five days' prior written notice to the Sellers' designated representative setting forth the terms and conditions of settlement. In the event that issues relate to a potential adjustment for which the Sellers' designated representative has acknowledged the liability of the Sellers, and such issues are required to be dealt with in the same proceeding as separate issues relating to a potential adjustment for which the Purchaser would be liable, then the Purchaser shall have the right, at its expense, to control the audit or proceeding with respect to the latter issues.

(iii) With respect to issues relating to a potential adjustment for which both the Sellers (as evidenced by the acknowledgment of the Sellers' designated representative under this Section 7.03) and the Purchaser or the Company could be liable, (i) both the Purchaser and the Sellers' designated representative may participate in the audit or proceeding, and (ii) the audit or proceeding shall be controlled by that party which would bear the burden of the greater portion of the sum of the adjustment and any corresponding adjustments that may reasonably be anticipated for future Tax periods. The principle set forth in the immediately preceding sentence shall govern also for purposes of deciding any issue that must be decided jointly (including, without limitation, choice of judicial forum) in situations in which separate issues are otherwise controlled under this Section 5.3 by the Purchaser and the Sellers.

(iv) After the Closing, the Sellers shall promptly notify Purchaser in writing of any written notice of a proposed assessment or claim in an audit or administrative or judicial proceeding of the Sellers which, if determined adversely to the Sellers, would be grounds for indemnification under Section 2.5(c) and Article VIII; provided, however, that a failure to give such notice will not affect the Sellers' right to indemnification under Section 2.5 and Article VIII

except to the extent, if any, that, but for such failure, the Purchaser could have avoided all or any portion of the Tax liability in question.

(v) In the case of an audit or administrative judicial proceeding that relates to matters for which the Sellers are entitled to indemnification pursuant to Section 2.5 and Article VIII, provided that the Purchaser acknowledges in writing the liability of the Purchaser under this Agreement to hold the Sellers harmless against the full amount of any adjustment which may be made as a result of such audit or proceeding that relates to the Section 338(h)(10) Election and the provisions of Section 2.5(c), the Purchaser shall have the right at Purchaser's expense to participate in and control the conduct of such audit or proceeding, but only to the extent that such audit or proceeding relates solely to a potential adjustment for which the Purchaser has acknowledged the liability of the Purchaser. The Sellers may also participate in any such audit or proceeding and, if the Purchaser does not assume the defense of any such audit or proceeding, the Sellers may defend the same in such manner as it may deem appropriate including, but not limited to, settling such audit or proceeding after giving five (5) days prior written notice to the Purchaser setting forth the terms and conditions of settlement. In the event that issues relate to a potential adjustment for which the Purchaser has acknowledged the liability of the Purchaser, and such issues are required to be dealt with in the same proceeding as separate issues relating to a potential adjustment for which the Sellers would be liable, then the Sellers shall have the right, at their expense, to control the audit or proceeding with respect to the latter issues.

(vi) The Sellers shall not enter into any compromise or agreement to settle, which would adversely affect the Purchaser or the Company for such year or a subsequent year, without the written consent of the Purchaser, which consent may not be unreasonably withheld. The Purchaser shall not enter into any such compromise or agreement to settle, which would adversely affect the Sellers for such year or a subsequent year, without the written consent of the Sellers' designated representative, which consent may not be unreasonably withheld. Similarly, the Purchaser and the Sellers agree to cooperate, and the Purchaser agrees to cause the Company to cooperate, in the defense against or compromise of any claim in any audit or proceeding.

(d) Cooperation and Exchange of Information. The Sellers and the Purchaser will provide each other with such cooperation and information as may be reasonably requested of the other party in filing any Return, amended Return or claim for refund, determining a liability for Taxes or a right to a refund of Taxes, participating in or conducting any audit or other proceeding in respect of Taxes or making representations to or furnishing information to parties subsequently desiring to purchase any of the Company or any part of the Business from the Purchaser. Such cooperation and information shall include providing copies of relevant Returns or portions thereof, together with accompanying schedules, related work papers and documents relating to rulings or other determinations by Tax authorities. The Sellers shall make themselves available on a basis mutually convenient to both parties to provide explanations of any documents or information provided hereunder. Each of the Sellers and the Purchaser shall retain all Returns, schedules and work papers, records and other documents in their possession relating to Tax matters of the Company for each taxable period first ending after the Closing Date and for all prior taxable periods until the later of (i) the expiration of the statute of limitations of the taxable periods to which such Returns and other documents relate, without regard to extensions except to the extent notified by the other party in writing of such extensions for the respective

Tax periods, or (ii) six years following the due date (without extension) for such Returns. Any information obtained connection with the filing of Returns or claims for refund or in conducting an audit or other proceeding.

**Section 5.4. *Non-Competition and Confidentiality Agreement.*** For a period of five years after the termination of the respective Employment Agreement, each Seller will not, (a) directly or indirectly, anywhere in the United States, Canada, Mexico Central or South America or the Caribbean region engage in any business that manufactures, markets, blends, distributes, or supplies products or services of the kind manufactured, marketed, distributed, blended or supplied by the Company as of the Closing Date; the foregoing provision shall be inapplicable to J. Andersen to the extent that subsequent to employment with the Company, J. Andersen engages in (i) a business that distributes polyurethane foam products and systems at the distributor level and such products are not in direct competition with Purchaser, any Affiliate of Purchaser or the Company, or (ii) a business at the contractor or applicator level that uses or applies polyurethane foam products (whether or not such products compete with products of Purchaser, any Affiliate of Purchaser or the Company); provided that J. Anderson signs a confidentiality agreement with Purchaser prior to any such employment; or (b) directly or indirectly employ, engage, contract for or solicit the services in any capacity of any Person who is employed by the Company in the operation of the Business on the date hereof; or (c) use for its own benefit or divulge or convey to any third party, any Confidential Information (as hereinafter defined) relating to the Business. For purposes of this Agreement, Confidential Information consists of all information, knowledge or data relating to the Business including, without limitation, customer and supplier lists, formulae, trade secrets, know-how, processes, other secrets, consultant contracts, pricing information, marketing plans, product development plans, business acquisition plans and all other information relating to the operation of the Business not in the public domain or otherwise publicly available. Information which enters the public domain or is publicly available loses its confidential status hereunder so long as the Sellers do not directly or indirectly cause such information to enter the public domain.

The Sellers acknowledges that the restrictions contained in this Section 5.4 are reasonable and necessary to protect the legitimate interests of the Purchaser and that any breach by the Sellers of any provision hereof will result in irreparable injury to the Purchaser. The Sellers acknowledge that, in addition to all remedies available at law, the Purchaser shall be entitled to equitable relief, including injunctive relief, and an equitable accounting of all earnings, profits or other benefits arising from such breach and shall be entitled to receive such other damages, direct or consequential, as may be appropriate. The Purchaser shall not be required to post any bond or other security in connection with any proceeding to enforce this Section 5.4.

**Section 5.5. *Reasonable Commercial Efforts; Further Assurances.*** Subject to the terms and conditions herein provided, each of the parties hereto shall use its reasonable commercial efforts to take, or cause to be taken, all action, and to do, or cause to be done, all things reasonably necessary, proper or advisable under applicable laws and regulations to consummate and make effective the transactions contemplated by this Agreement. Each of the Sellers and the Purchaser will use their respective reasonable commercial efforts to obtain consents of all Governmental Authorities and third parties necessary to the consummation of the transactions contemplated by this Agreement. In the event that at any time after Closing any further action is

necessary to carry out the purposes of this Agreement, the Seller or the Purchaser, as the case may be, shall take all such action without any further consideration therefor.

**Section 5.6 *Employee Retention Payment.*** Sellers shall have the right to earmark and pay, on or prior to December 31, 2005, up to \$4,050,000 to employees of the Company from the Base Purchase Price; provided, however, that Sellers shall provide Purchaser a list of the employees to be paid, the amounts and the conditions, if any, in advance of such payments. Each employee shall be required to sign a confidentiality agreement whereby they agree not to disclose the receipt and amount of such payments.

**Section 5.7 *Employee Automobile Purchase Program.*** Sellers shall have the right to cause the Company, for the Seller Continuation Period, to continue its employee automobile purchase program whereby employees, including the Shareholders, shall have the right to purchase Company-leased automobiles for the residual balance of the lease, if any, provided that the difference between the fair market value of the automobile and the residual balance paid will be reflected and reported as income on IRS Form W-2 for each employee or Shareholder.

## ARTICLE VI

### Conditions to Closing

**Section 6.1. *Mutual Condition.*** The respective obligations of each party to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment at or prior to Closing of the condition that (a) no Governmental Authority of competent jurisdiction shall have (i) enacted, issued, promulgated, enforced or entered any statute, rule, regulation, judgment, decree, injunction or other order which is in effect; or (ii) commenced or threatened any action or proceeding, which in either case would prohibit consummation of the transactions contemplated by this Agreement.

**Section 6.2. *Conditions to the Purchaser's Obligations.*** The obligations of the Purchaser to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment prior to or at Closing of each of the following conditions:

a. All representations and warranties made by the Seller in this Agreement and the Schedules delivered by the Seller to the Purchaser pursuant hereto shall be true, correct and complete in all material respects as of the Closing Date.

b. There shall have been no material damage, destruction or loss to, or any other material and adverse change in, the Business or the assets of the Company, regardless of insurance coverage.

c. (i) All authorizations, consents, waivers, approvals or other actions legally required in connection with the execution, delivery and performance of this Agreement, and the instruments of transfer by the Sellers and the consummation by the Sellers of the transactions contemplated hereby and thereby shall have been obtained and shall be in full force and effect; the Sellers shall have obtained any authorizations, consents, waivers, approvals or other actions

required to prevent a material breach or default by the Company under any contract to which the Company is party or for the continuation of any agreement to which the Company is a party and which relates and is material to the Company's assets or the Business; and all authorizations, consents, waivers, approvals or other actions necessary to permit the Purchaser to operate the Business in compliance with all applicable laws immediately after the Closing shall have been obtained and shall be in full force and effect.

(d) Prior to or at Closing, the Sellers shall have delivered to the Purchaser:

(i) stock certificates evidencing the Shares duly endorsed (or accompanied by duly executed stock powers) executed in blank in form satisfactory to the Purchaser;

(ii) a certified copy of the Certificate of Incorporation and By-laws of the Company and all amendments thereto;

(iii) a copy of the minute books and stock register of the Company, certified by the Secretary as of the Closing Date;

(iv) an opinion of Messerli & Kramer P.A., counsel to the Sellers, dated the Closing Date, and substantially in the form attached as Exhibit C;

(v) employment agreements in the form of Exhibit D executed by the Sellers (collectively, "Employment Agreements");

(vi) releases in the form of Exhibit E executed by Sellers (collectively, Sellers' Releases);

(vii) noncompetition agreements in the form of Exhibit F executed by Sellers (collectively, the "Noncompetition Agreements");

(viii) a pay off letter from U.S. Bank for the benefit of the Company, in form and substance satisfactory to the Purchaser;

(ix) the Sellers shall deliver or cause to be delivered to the Purchaser IRS Form 8023, executed by each Seller, and any comparable forms required by applicable state or local income tax laws for purposes of making the Elections under Section 2.5 hereof,;

(x) a resolution from Company in the form attached as Exhibit G, adopting the Foam Enterprises, Inc. Severance Policy; and

(xi) such other documents or instruments as the Purchaser reasonably requests to effect the transactions contemplated hereby.

Section 6.3. *Conditions to the Sellers' Obligations.* The obligations of the Sellers to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment at or prior to the Closing of each of the following conditions:

(a) All representations and warranties made by the Purchaser in this Agreement shall be true, correct and complete in all material respects on the date hereof and as of the Closing Date as though such representations and warranties were made as of the Closing Date, and the Purchaser shall have duly performed or complied with all of the covenants, obligations and conditions to be performed or complied with by it under the terms of this Agreement on or prior to or at Closing.

(b) All authorizations or approvals or other action required in connection with the execution, delivery and performance of this Agreement, the instruments of transfer by the Purchaser and the consummation by the Purchaser of the transactions contemplated hereby and thereby shall have been obtained and shall be in full force and effect.

(c) Prior to or at Closing, the Purchaser shall have delivered to the Sellers such closing documents as shall be reasonably requested by the Sellers in form and substance reasonably acceptable to the Sellers' counsel, including the following:

(i) a certificate of the Secretary or Assistant Secretary of the Purchaser, dated the Closing Date, as to the incumbency of any officer of the Purchaser executing this Agreement, the instruments of transfer and covering such other matters as the Seller may reasonably request;

(ii) a copy of the resolutions of the Purchaser's Board of Directors authorizing the execution, delivery and consummation of this Agreement, the instruments of transfer and the transactions contemplated hereby and thereby;

(iii) an opinion of Karen Killeen, counsel to the Purchaser, dated the Closing Date, and substantially in the form attached as Exhibit H;

(iv) the Base Purchase Price, as set forth in Section 2.2 by a wire transfer as specified in Exhibit A;

(v) the Employment Agreements executed by Purchaser;

(vi) the Noncompetition Agreements executed by Purchaser; and

(vii) such other documents or instruments as the Seller reasonably requests to effect the transactions contemplated hereby.

**ARTICLE VII**  
**(Reserved. Intentionally Omitted)**

## ARTICLE VIII

### Survival of Representations and Warranties; Indemnification

Section 8.1. *Survival of Representations and Warranties.* Except as set forth below, the representations and warranties of the Sellers provided for in this Agreement and any Financial Statement or report or other document delivered pursuant to this Agreement or in connection with the transaction contemplated by the Agreement (collectively, the "Acquisition Documents") as well as the Contingent Liabilities (except for Tax Liabilities, Environmental Liabilities, Employee Matters and Employee Benefit Plans and any Contingent Liabilities relating to the litigation entitled Marincoat S.P.A. v. Urethane Products International, Offshore Joint Services and Foam Enterprises, Inc., Court of Milan, Italy (2003)) shall survive the Closing for two (2) years from the Closing Date for the benefit of the Purchaser hereto and their successors and assigns. The representation and warranties provided for in Sections 3.2, 3.3, 3.15, 3.17, 3.18, 3.19, and 3.20 as well as any Contingent Liabilities which are Tax Liabilities, Environmental Liabilities, relate to Employee Matters and Employee Benefit Plans and/or related to the litigation entitled Marincoat S.P.A. v. Urethane Products International, Offshore Joint Services and Foam Enterprises, Inc., Court of Milan, Italy (2003) shall survive the Closing and remain in full force and effect for six (6) years. Except as set forth below, the representations and warranties of the Purchaser provided for in the Acquisition Documents shall survive the Closing for two (2) years from the Closing Date for the benefit of the Sellers hereto and their successors and assigns; provided, however, the representations, warranties, and covenants of the Purchaser provided for in Article II shall survive the Closing and remain in full force and effect for six (6) years. The survival period of each representation, warranty, or covenant of Sellers or Purchaser and the survival period of Contingent Liabilities as provided in this Section 8.1 is hereinafter referred to as the "Survival Period."

Section 8.2. *Indemnification.* (a) The Sellers shall indemnify and hold harmless the Purchaser, its Affiliates, officers, directors, employees, agents and representatives, and any Person claiming by or through any of them, against and in respect of any and all claims, costs, expenses, damages, liabilities, losses or deficiencies (including, without limitation, reasonable counsel's fees and other costs and expenses incident to any suit, action or proceeding) (the "Damages") arising out of, resulting from or incurred in connection with (i) any inaccuracy in any representation or the breach of any warranty made by the Sellers contained in this Agreement or any of the Closing Documents, (ii) the breach by the Sellers of any covenant or agreement to be performed by it hereunder and (iii) any Contingent Liabilities. Notwithstanding anything herein to the contrary, except for any inaccuracy or breach of representation and warranties provided for in Sections 3.15, 3.17, 3.18, and 3.19, as well as any Contingent Liabilities which are Tax Liabilities, Environmental Liabilities or relate to Employee Matters or Employee Benefit Plans or relate to the litigation entitled Marincoat S.P.A. v. Urethane Products International, Offshore Joint Services and Foam Enterprises, Inc., Court of Milan, Italy (2003), which are subject to a separate cap as set forth below, the aggregate amount of Damages that Sellers, on a several (based on the percentage of ownership of the Shares) but not joint basis, shall be liable for pursuant to this Section 8.2(a) shall not exceed \$3,000,000. For any inaccuracy or breach of representation and warranties provided for in Sections 3.15, 3.17, 3.18,

or 3.19 as well as any Contingent Liabilities which are Tax Liabilities, Environmental Liabilities or relate to Employee Matters or Employee Benefit Plans or relate to the litigation entitled Marincoat S.P.A. v. Urethane Products International, Offshore Joint Services and Foam Enterprises, Inc., Court of Milan, Italy (2003), the aggregate amount of Damages that Sellers, on a several (based on the percentage of ownership of the Shares) but not joint basis, shall be liable for pursuant to this Section 8.2(a) shall be subject to the following separate caps: (i) \$1,000,000 for inaccuracies or breach of representation and warranties provided for in Section 3.15 and Contingent Liabilities which are Tax Liabilities; (ii) \$3,000,000 for inaccuracies or breach of representation and warranties provided for in Sections 3.18 and 3.19 and Contingent Liabilities which relate to Employee Matters or Employee Benefit Plans; (iii) \$5,000,000 for inaccuracies or breach of representation and warranties provided for in Section 3.17 and Contingent Liabilities which are Environmental Liabilities and (iv) \$2,000,000 for Contingent Liabilities relating to the litigation entitled Marincoat S.P.A. v. Urethane Products International, Offshore Joint Services and Foam Enterprises, Inc., Court of Milan, Italy (2003). The Purchaser shall not be entitled to recover Damages from the Sellers for any claim for indemnification pursuant to Section 8.2(a)(i), (ii), and (iii) made after the expiration of the applicable Survival Period.

(b) Purchaser shall indemnify and hold harmless the Sellers, their Affiliates, officers, directors, employees, agents and representatives, and any Person claiming by or through any of them, against and in respect of any and all claims, costs, expenses, damages, liabilities, losses or deficiencies (including, without limitation, reasonable counsel's fees and other costs and expenses incident to any suit, action or proceeding) (the "Damages") arising out of, resulting from or incurred in connection with (i) any inaccuracy in any representation or the breach of any warranty made by the Purchaser contained in this Agreement or any of the Closing Documents, and (ii) the breach by the Purchaser of any covenant or agreement to be performed by it hereunder. Notwithstanding anything herein to the contrary, except for any inaccuracy or breach of representation, warranty or covenant provided for in Article II, the aggregate amount of Damages that Purchaser shall be liable for pursuant to this Section 8.2(b) shall not exceed \$3,000,000. For any inaccuracy or breach of representation, warranty or covenant provided for in Article II, the aggregate amount of Damages that Purchaser shall be liable for pursuant to this Section 8.2(b) shall not be subject to any cap. The Sellers shall not be entitled to recover Damages from the Purchaser for any claim for indemnification pursuant to Section 8.2(b)(i) and (ii) made after the expiration of the applicable Survival Period.

(c) Any Person providing indemnification pursuant to the provisions of this Section 8.2 shall be hereinafter referred to as an "Indemnifying Party" and any Person entitled to be indemnified pursuant to the provisions of this Section 8.2 is hereinafter referred to as an "Indemnified Party."

(d) The Sellers' indemnification obligation contained in Section 8.2(a)(i) and (ii) hereunder shall not apply to any claim for Damages until the aggregate of all such claims total \$100,000 in which event the Sellers' indemnity obligation shall apply to the total amount. Notwithstanding the foregoing, any claim for Damages relating to the litigation entitled Marincoat S.P.A. v. Urethane Products International, Offshore Joint Services and Foam Enterprises, Inc., Court of Milan, Italy (2003) shall not be subject to the \$100,000 basket and Sellers' indemnity obligation shall apply to the total amount. All such claims made during the

relevant Survival Period shall be counted in determining whether the thresholds specified above have been achieved. The Purchaser shall have the right to offset any and all claims for Damages against amounts due to the Sellers, including but not limited to the Additional Payment in the event that, and at such time that, the aggregate amount of all such claims exceeds \$100,000, or in the case of the litigation entitled Marincoat S.P.A. v. Urethane Products International, Offshore Joint Services and Foam Enterprises, Inc., Court of Milan, Italy (2003), at such time that the claim for Damages is tendered. Neither the exercise of nor the failure to exercise such right of set-off will constitute an election of remedies or limit Purchaser in any manner in the enforcement of any other remedies that may be available to it.

(e) The provisions of this Article 8 shall constitute the sole remedy of any Indemnified Party for Damages arising out of, resulting from or incurred in connection with any inaccuracy in any representation or the breach of any warranty made by the Sellers in this Agreement.

Section 8.3. *Procedures for Claims.* In the case of any claim for indemnification arising from a claim of a third party, an Indemnified Party shall give prompt written notice, in no event more than 10 days following such Indemnified Party's receipt of such claim or demand, to the Indemnifying Party of any claim or demand which such Indemnified Party has knowledge and as to which it may request indemnification hereunder. The Indemnifying Party shall have the right to defend and to direct the defense against any such claim or demand, in its name or in the name of the Indemnified Party, as the case may be, at the expense of the Indemnifying Party, and with counsel selected by the Indemnifying Party unless (i) such claim or demand seeks an order, injunction or other equitable relief against the Indemnified Party, or (ii) the Indemnified Party shall have reasonably concluded that (x) there is a conflict of interest between the Indemnified Party and the Indemnifying Party in the conduct of the defense of such claim or demand or (y) the Indemnified Party has one or more defenses not available to the Indemnifying Party. Notwithstanding anything in this Agreement to the contrary, the Indemnified Party shall, at the expense of the Indemnifying Party, cooperate with the Indemnifying Party, and keep the Indemnifying Party fully informed, in the defense of such claim or demand. The Indemnified Party shall have the right to participate in the defense of any claim or demand with counsel employed at its own expense; *provided, however*, that, in the case of any claim or demand described in clause (i) or (ii) of the second preceding sentence or as to which the Indemnifying Party shall not in fact have employed counsel to assume the defense of such claim or demand, the reasonable fees and disbursements of such counsel shall be at the expense of the Indemnifying Party. The Indemnifying Party shall have no indemnification obligations with respect to any such claim or demand which shall be settled by the Indemnified Party without the prior written consent of the Indemnifying Party, which consent shall not be unreasonably withheld or delayed.

## ARTICLE IX

### Miscellaneous

Section 9.1. *Notices.* All notices or other communications required or permitted hereunder shall be in writing and shall be delivered personally, by facsimile or sent by certified,

registered or express air mail, postage prepaid, and shall be deemed given when so delivered personally, or by facsimile, or if mailed, five days after the date of mailing, as follows:

If to the Purchaser: BASF Corporation  
1609 Biddle Avenue  
Wyandotte, MI 48192  
Telephone: (734) 324-6266  
Facsimile: (734) 324-6773  
Attention: Group V.P. Urethanes

With a copy to: BASF Corporation  
3000 Continental Drive - North  
Mt. Olive, NJ 07828  
Telephone: (973) 426-3200  
Facsimile: (973) 426-3213  
Attention: Office of General Counsel

If to the Sellers: Dennis E. Holbert  
18830 Windward Lane  
Houston, TX 77058  
  
Melinda Gay Holbert  
18830 Windward Lane  
Houston, TX 77058  
  
Gregory D. Gustafson  
7723 Gleason Road  
Edina, MN 55439  
  
James L. Andersen  
4400 Goldenrod Lane North  
Plymouth, MN 55442

With a copy to: Messerli & Kramer P.A.  
150 South Fifth Street  
1800 Fifth Street Towers  
Minneapolis, MN 55402  
Telephone: (612) 672-3600  
Facsimile: (612) 672-3777  
Attention: William M. Habicht, Esq.

Section 9.2. *Expenses.* Regardless of whether the transactions provided for in this Agreement are consummated, except as otherwise provided herein, each party hereto shall pay its own expenses incident to this Agreement and the transactions contemplated herein.

Section 9.3. *Governing Law.* This Agreement shall be governed by, and construed in accordance with, the internal laws of the State of Delaware, without reference to the choice of law principles thereof.

Section 9.4. *Assignment; Successors and Assigns; No Third Party Rights.* Except as otherwise provided herein, this Agreement may not be assigned by operation of law or otherwise, and any attempted assignment shall be null and void. The Purchaser may assign all of its rights under this Agreement to any Affiliate; *provided* such Affiliate assumes all of the obligations of the Purchaser hereunder and provided Purchaser remains bound for performance of all of the obligations hereunder. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns and legal representatives. This Agreement shall be for the sole benefit of the parties to this Agreement and their respective successors, assigns and legal representatives and is not intended, nor shall be construed, to give any Person, other than the parties hereto and their respective successors, assigns and legal representatives, any legal or equitable right, remedy or claim hereunder.

Section 9.5. *Counterparts.* This Agreement may be executed in one or more counterparts, each of which shall be deemed an original agreement, but all of which together shall constitute one and the same instrument.

Section 9.6. *Titles and Headings.* The headings and table of contents in this Agreement are for reference purposes only, and shall not in any way affect the meaning or interpretation of this Agreement.

Section 9.7. *Entire Agreement.* This Agreement, including the Schedules and Exhibits attached thereto, constitutes the entire agreement among the parties with respect to the matters covered hereby and supersedes all previous written, oral or implied understandings among them with respect to such matters.

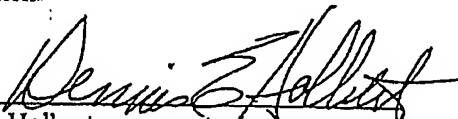
Section 9.8. *Amendment and Modification.* This Agreement may only be amended or modified in writing signed by the party against whom enforcement of such amendment or modification is sought.


Section 9.9. *Waiver.* Any of the terms or conditions of this Agreement may be waived at any time by the party or parties entitled to the benefit thereof, but only by a writing signed by the party or parties waiving such terms or conditions.

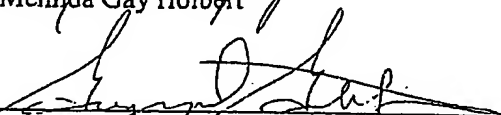
Section 9.10. *Severability.* The invalidity of any portion hereof shall not affect the validity, force or effect of the remaining portions hereof. If it is ever held that any restriction hereunder is too broad to permit enforcement of such restriction to its fullest extent, such restriction shall be enforced to the maximum extent permitted by law.

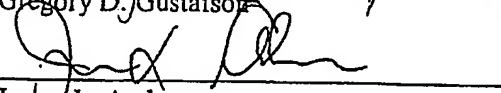
Section 9.11. *No Strict Construction.* Each of the Purchaser and the Seller acknowledge that this Agreement has been prepared jointly by the parties hereto, and shall not be strictly construed against either party.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.


  
Dennis E. Holbert

  
Melinda Gay Holbert

  
Gregory D. Gustafson

  
James L. Andersen

BASF Corporation

By: 

Name: William Bernstein

Title: Group V.P. - Urethanes

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